



भारत का राजपत्र The Gazette of India

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No. 43]

NEW DELHI, SATURDAY, OCTOBER 24, 1992/KARTIKA 2, 1914

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किये गये सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

गृह मंत्रालय
(घातारिक सुरक्षा विभाग)
(पुनर्वास प्रभाग)

नई दिल्ली, 17 सितम्बर, 1992

MINISTRY OF HOME AFFAIRS

(Department of Internal Security)

(Rehabilitation Division)

New Delhi, the 17th September, 1992

का.आ. 2725.—निष्क्रांत संपत्ति प्रबंध अधिनियम, 1950 (1950 का 31) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा गृह मंत्रालय पुनर्वास प्रभाग में संयुक्त सचिव, श्री जी. एस. संधु को उक्त अधिनियम के द्वारा प्रथवा उसके अधीन निष्क्रांत संपत्तियों के महानिरक्षक को सौंपे गए कार्यों का निष्पादन करने के उद्देश्य से महानिरक्षक नियुक्त करती है।

2. इससे द्वारा दिनांक 3-7-1992 की अधिसूचना संख्या 1(3)/विशेष कक्ष/90-एस. एस. II/एस(ख) का अधिक्रमण किया जाता है।

[संख्या 1(3)/विशेष कक्ष/90-एस. एस. II/एस(ख)]

कुलदीप राय, उप सचिव

S.O. 2725.—In exercise of the power conferred by Section 5 of the Administration of Evacuee Property Act, 1950 (31 of 1950), the Central Government hereby appoints Shri G. S. Sandhu, Joint Secretary in the Ministry of Home Affairs, Rehabilitation Division as the Custodian General of Evacuee Property for the purpose of performing functions assigned to such Custodian General by or under the said Act.

2. This supersedes notification No. 1(3)/Spl. Cell/90-SS. II/S(B) dated the 3-7-1992.

[No. 1(3)/Spl. Cell/90-SS. II/S(B)]

KULDIP RAI, Dy. Secy.

नई दिल्ली, 17 सितम्बर, 1992

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 14th September, 1992

(INCOME-TAX)

का.आ. 2726.—विस्थापित व्यक्ति (प्रतिकर तथा पुनर्वास) अधिनियम, 1954 (1954 का 44) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा गृह मंत्रालय, पुनर्वास प्रभाग में संयुक्त सचिव श्री जी. एम. संधु को उक्त अधिनियम के द्वारा अथवा उसके अधीन उन्हें मुख्य बंदोबस्त आयुक्त के रूप में सौंपे गए कार्यों का निष्पादन करने के उद्देश्य से मुख्य बंदोबस्त आयुक्त नियुक्त करती है।

2. इसे द्वारा दिनांक 3-7-1992 की अधिसूचना संख्या 1(3)/विशेष कज/90-एन.एस. II/एस(क) का अधि-क्रमण किया जाता है।

[संख्या 1(3)/विशेष कज/90-एन.एस. II/एस(क)]

कुलदीप राय, उप सचिव

New Delhi, the 17th September, 1992

S.O. 2726.—In exercise of the power conferred by Sub-section (i) of Section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints Shri G. S. Sandhu, Joint Secretary in the Ministry of Home Affairs, Rehabilitation Division as Chief Settlement Commissioner for the purpose of performing the functions assigned to such Chief Settlement Commissioner by or under the said Act.

2. This supersedes Notification No. 1(3)/Spl. Cell/90-SS. II/S(A) dated the 3rd July, 1992.

[No. 1(3)/Spl. Cell/90-SS. II/S(A)]

KULDIP RAI, Dy. Secy.

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 14 सितम्बर, 1992

(आयकर)

का.आ. 2727.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 80-छ की उपधारा (2) खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार "श्री वेंकटाचलपथी मंदिर, चेरनमहादेवी तमिलनाडु" को उक्त खंड के प्रयोजनार्थ संपूर्ण तमिलनाडु राज्य में ऐतिहासिक महत्वपूर्ण स्थान तथा प्रतिष्ठ पुनास्थल अधिसूचित करती है।

यह अधिसूचना 2.59 लाख रु. (दो लाख उनसठ हजार रुपये) की सीमा तक की मरम्मत/जीर्णोद्धार के लिए ही वैध होगी। मंदिर जीर्णोद्धार समिति विवाह आदि तथा आयमा क्रिया के लिए समुदाय भवन (कम्युनिटी हाल) के निर्माण के लिए जनता से दान नहीं लेगी।

[फा. सं. 176/1/92-आयकर नि-1]

केशव देव, उप सचिव

S.O. 2727.—In exercise of the powers conferred by clause (b) of sub-section (2) of Section 80G of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies 'Sri Venkatachalapathy Temple, Cheranmahadevi, Tamilnadu' to be a place of historic importance and Public worship of renown throughout the State of Tamil Nadu for the purpose of the said section.

This notification will be valid only for the repair/renovation work to the extent of Rs. 2.59 lakhs (Rupees two lakhs fifty nine thousand). The temple renovation committee will not receive donation from public for construction of community hall for performing marriages etc. and for Agama Kriya.

[F. No. 176/1/92-ITA-I]

KESHAV DEV, Dy. Secy.

आदेश

नई दिल्ली, 1 अक्टूबर, 1992

स्टाम्प

का.आ. 2728.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती है जो भारतीय लघु उद्योग विकास बैंक द्वारा जारी किए जाने वाले मात्र दो सौ पचास करोड़ रुपये के मूल्य के 13% भारतीय लघु उद्योग विकास बैंक बांड 2007 (प्रथम श्रृंखला) के रूप में वर्णित प्रोमिसरी नोटों के स्वरूप में बंधपत्रों पर उक्त अधिनियम के अंतर्गत प्रभावी है।

[सं. 25/92-स्टाम्प-फा. सं. 33/49/92-वि.क.]

ठाकुर दत्त, उप सचिव

ORDER

New Delhi, the 1st October, 1992

STAMPS

S.O. 2728.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes—13 per cent Small Industries Development Bank of India Bonds 2007 (1st Series) of the value of rupees two hundred and fifty crores only to be issued by Small Industries Development Bank of India are chargeable under the said Act.

[No. 25/92-Stamp—F. No. 33/49/92-ST]

THAKUR DATT, Dy. Secy.

(आर्थिक कार्य विभाग)

नई दिल्ली, 1 अक्टूबर, 1992

सारणी

का.भा. 2729.—केन्द्रीय सरकार, सिक्का निर्माण अधिनियम, 1906 (1906 का 3) की धारा 7 के साथ पठित धारा 21 का उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित नियम बनाती है, अर्थात् :-

1. संक्षिप्त नाम और प्रारम्भ: (1) इन नियमों का संक्षिप्त नाम सिक्का-निर्माण (एक रुपए के फेरिटिक स्टेनलेस इस्पात के सिक्के का, जिसमें 82 प्रतिशत लोहा और 18 प्रतिशत क्रोमियम होगा, मानक वजन और उपचार) नियम, 1992 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

22. मानक वजन और अनुज्ञात उपचार: सिक्का निर्माण अधिनियम, 1906 (1906 का 3) की धारा 6 के अधीन दिये गए निम्नलिखित अंकित मूल्य के फेरिटिक स्टेनलेस इस्पात के सिक्कों का मानक वजन और ऐसे सिक्के के बनाने में अनुज्ञात उपचार वैसा होगा, जैसा नीचे सारणी में विनिर्दिष्ट है :-

| अंकित मूल्य | मानक वजन | अनुज्ञात उपचार | |
|-------------|------------|--|---|
| | | संरचना में | मानक वजन में |
| 1 | 2 | 3 | 4 |
| एक रुपया | 4.85 ग्राम | क्रोमियम के लिए 1/200 वां भाग, धन या शुष्ण, अर्थात् क्रोमियम 17.5 प्रतिशत और 18.5 प्रतिशत के बीच हो सकता है। | 1/25 वां भाग, धन या शुष्ण अर्थात् वजन 5.044 ग्राम और 4.656 ग्राम के बीच हो सकता है। |

[फा.सं. 1/1/92-सिक्का II (1)]

जी. एस. ग्रेवाल, अधीक्षक सचिव

(Department of Economic Affairs)

New Delhi, the 1st October, 1992

S.O 2729.—In exercise of the powers conferred by sub-section (1) of section 21 read with section 7 of the Coinage Act, 1906 (3 of 1906), the Central Government hereby makes the following rules, namely :-

1. Short title and commencement :-

(1) These rules may be called the Coinage (Standard Weight and Remedy of Ferritic Stainless Steel Coin of One Rupee containing Iron 82% and Chromium 18% Rules, 1992.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Standard Weight and remedy allowed:

The standard weight of the ferritic stainless steel coins of the following denomination coined under section 6 of the Coinage Act, 1906 (3 of 1906) and the remedy allowed in making such coin shall be as specified in the Table below :-

TABLE

| Denomination | Standard Weight | In composition | Remedy allowed |
|--------------|-----------------|--|--|
| | | | In standard weight |
| 1 | 2 | 3 | 4 |
| One Rupee | 4.85 grammes | 1/200th, plus or minus for Chromium, that is to say, Chromium could vary between 17.5% and 18.5% | 1/25th plus or minus, that is to say, the weight could vary between 5.044 Grammes and 4.656 grammes. |

[F. No. 1/1/92-Coin. II (1)]

G.S. GREWAL, Under Secy.

नई दिल्ली, 1 अक्टूबर, 1992

डिजाइन :

का.प्र. 2730.—केन्द्रीय सरकार, सिक्का निर्माण अधिनियम, 1906 का प्रयोग करते हुए, यह प्रवर्धित करती है कि :—

(क) केन्द्रीय सरकार के प्राधिकार के अधीन जारी किए जाने के लिए एक रुपया अंकित मूल्य के फेरिटिक स्टेनलेस इस्पात के सिक्के को टंकशाल में बने जाएंगे और

(ख) उपरोक्त अंकित मूल्य के सिक्के निम्नलिखित विभाग, डिजाईन और संरचना के अनुसूक्त होंगे, अर्थात् :—

| अंकित मूल्य | आकार और बाहरी व्यास | दांतों की संख्या | धातु संरचना |
|-------------|--------------------------|------------------|---|
| एक रुपया | वृत्ताकार 25 मिलीमीटर | 130 | फेरिटिक स्टेनलेस इस्पात, जिसमें लोहा 82 प्रतिशत, क्रोमियम 18 प्रतिशत होगा : |

मुख्य भाग : सिक्के के इस भाग पर अशोक स्तम्भ का सिंह शीर्षक होगा, जिसके नीचे "सत्यमेव जयते" वाक्य अंकित होगा, बाईं ऊपरी परिधि में "भारत" शब्द और बाईं ऊपरी परिधि में "INDIA" शब्द पार्ष्व में अंकित होगा।

पृष्ठभाग : सिक्के के इस भाग पर अंकित मूल्य "1" अन्तर्राष्ट्रीय अंक में होगा, इसके पार्ष्व में बाईं ओर दाईं परिधि में सिक्के की माली का डिजाइन होगा। ऊपरी परिधि में "रुपया" शब्द और निम्नलिखित परिधि में "RUPEE" शब्द भी होगा और नीचे सिक्का निर्माण का वर्ष भी अन्तर्राष्ट्रीय अंकों में दर्शाया जायेगा। सिक्के का किनारा वंशुरित होगा।

[फा.सं. 1/1/92-सिक्का II-(2)]

जी.एस. ग्रेवाल, प्रवर सचिव

New Delhi, the 1st October, 1992

S.O 2730.—In exercise of the powers conferred by section 6 of the Coinage Act, 1906 (3 of 1906), the Central Government hereby determines that:—

(a) Ferritic stainless steel coins of the One Rupee denomination shall also be coined at the Mint for issue under the authority of the Central Government.

(b) The coin of the above denomination shall conform to the following dimensions, designs and composition namely :—

| Denomination | Shape and outside diameter | Number of serrations | Metal composition |
|--------------|----------------------------|----------------------|---|
| One Rupee | Circular 25 millimeters | 130 | Ferritic stainless steel containing Iron—82% Chromium—18% |

DESIGN

OBVERSE: This face of the coin shall bear the Lion Capital of Ashoka Pillar with the legend "सत्यमेव जयते" inscribed below, flanked on the left upper periphery with the word "भारत" and on the right upper periphery with the word 'INDIA'.

REVERSE : The reverse face of the coin shall bear the denominational value '1' in international numeral flanked on the left and right periphery with the design 'Ear of Corn'. The upper periphery shall also bear the word 'रुपया' in Hindi and lower periphery the word 'RUPEE' in English and the year of coinage in international numerals shall also be shown underneath. The coin shall be with serrated edge.

[F. No. 1/1/92-Coin. II (2)]

G.S. GREWAL, Under Secy.

(बैंकिंग प्रभाग)

(LF. 1 Section)

New Delhi, the 5th October, 1992

नई दिल्ली, 25 सितम्बर, 1992

का.सा. 2731.—भारतीय स्टेट बैंक (प्रमुखी बैंक) अधिनियम, 1959 (1959 का 38) की धारा 28 की उपधारा (2क) के तहत पदवि धारा 25 की उपधारा (1) के खंड (गक) के अनुसरण से केन्द्रीय सरकार, एतद्वारा स्टेट बैंक आफ हैदराबाद, गन्तावनी, हैदराबाद के विशेष सहायक श्री एन. सीताराम राव को स्टेट बैंक आफ हैदराबाद के कर्मचारियों में से, जो कर्मकार हैं, 25 सितम्बर, 1992 से प्रारम्भ होकर 24 सितम्बर, 1995 को समाप्त होने वाली 3 वर्ष की अवधि के लिए भारत सरकार, वित्त, गन्तावनी, आर्थिक कार्य विभाग (बैंकिंग प्रभाग) की दिनांक 14 अप्रैल, 1988 की अधिसूचना संख्या एक. 15/6/85-आई.आर. के अधीन नियुक्त श्री श्याम सुन्दर कुलकर्णी के स्थान पर स्टेट बैंक आफ हैदराबाद के निदेशक बोर्ड में निदेशक नियुक्त करती है।

[संख्या एक. 15/1/92-आई.आर.]

सतपाल भाटिया, प्रवर सचिव

(Banking Division)

New Delhi, the 25th September, 1992

S.O. 2731.—In pursuance of clause (ca) of sub-section (1) of section 25 read with sub-section (2A) of section 26 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government hereby appoints Shri N. Seetharama Rao, Special Asstt., State Bank of Hyderabad, Gun Foundry, Hyderabad as a Director on the Board of the State Bank of Hyderabad from among the employees of the State Bank of Hyderabad who are workmen for a period of three years commencing on 25th September, 1992 and ending with 24th September, 1995 in the place of Shri Shyam Sunder Kulkarni appointed under the Notification of the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) No. F. 15/6/85-IR dated the 14th April, 1988.

[No. F. 15/1/92-IR]

S. P. BHATIA, Under Secy.

(आई.एफ. 1 अनुभाग)

नई दिल्ली, 5 अक्टूबर, 1992

का.सा. 2732.—केन्द्रीय सरकार, औद्योगिक वित्त निगम अधिनियम, 1948 (1948 का 15) की धारा 21 की उपधारा (2) के अनुसरण में, भारतीय औद्योगिक वित्त निगम के निदेशक बोर्ड की सिफारिश पर उक्त निगम द्वारा 8 अक्टूबर, 1992 को जारी किए जाने वाले तथा 8 अक्टूबर, 2007 को परिपक्व होने वाले बॉण्डों पर देय व्याज की दर एतद्वारा 15% (पेरसे प्रतिशत) वार्षिक निर्धारित करती है।

[फा.सं. 2(15)/92-आई.एफ. I]

श्रीमती गोरी कुमार, उप सचिव

S.O. 2732.—In pursuance of sub-section 2 of Section 21 of the Industrial Finance Corporation Act, 1948 (15 of 1948) the Central Government on the recommendation of the Board of Directors of the Industrial Finance Corporation of India, hereby fixes 13 per cent (Thirteen per cent) per annum as the rate of interest payable on the bonds to be issued by the said Corporation on 8th October, 1992 and maturing on 8th October, 2007.

[F. No. 2(15)/92-IF. I]

Smt. GAURI KUMAR, Dy. Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 24 सितम्बर, 1992

का.सा. 2733.—चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) के खंड 5 उपखंड (i) के तहत प्रदर्शित शक्तियों का प्रयोग करते हुए और इस मंत्रालय के दिनांक 2-7-92 की अधिसूचना सं. 809/3/92-एफ(सी) के अनुक्रम में, केन्द्र सरकार श्री शिवापदा भट्टाचार्य को केन्द्रीय फिल्म प्रमाणन बोर्ड की कलकत्ता सलाहकार पैनल के सदस्य के रूप में तत्काल प्रभाव से और अगले प्राप्ति के होने तक नियुक्त करती है।

[फा. सं. 809/3/92-एफ(सी.)]

एम.एस. सेठी, डेस्क अधिकारी

MINISTRY OF INFORMATION & BROADCASTING

New Delhi, the 24th September, 1992

S.O. 2733.—In exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952), read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983 and in continuation of this Ministry's Notification No. 809/3/92-F(C) dated 2nd July, 1992, the Central Government is pleased to appoint Shri Shibapada Bhattacharjee as a member of the Calcutta Advisory Panel of the Central Board of Film Certification with immediate effect and until further orders.

[File No. 809/3/92-F(C)]

M. S. SETHI, Desk Officer

प्रस. मंत्रालय

नई दिल्ली, 1 सितम्बर, 1992

का.सा. 2734.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, येलवे को. सी. ला. एल. की भगवेंद्रकाविरों के प्रवर्तन के संबंध निषेधकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1), प्रस्ताव के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार की 31-8-92 की प्राप्ति हुआ था।

[संख्या एल-20012/6/88/आई.आर. (कोल-I)]

वी. के. वेणुगोपालन, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 1st September, 1992

S.O. 2734.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government In-

Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bhagaband Colliery of M/s. B.C.C. Ltd. and their workmen, which was received by the Central Government on the 31-8-92.

[No. L-20012(6)/88-IR(Coal-I)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 110 of 1990

PARTIES :

Employers in relation to the management of Bhagaband Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen

PRESENT :

Shri S. Mitra,
Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Joshi, Advocate.

For the Workmen : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Bihar

INDUSTRY : Coal

Dated, the 14th August, 1992

AWARD

By Order No. L-20012(6)/88-IR.(Coal-I), dated, the 8th May, 1990, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether Shri Jogeshwar Singh & 51 other workmen as per list annexed have actually worked during 1983 to 1986 in the various jobs of which contract was given to Sri Jogeshwar Singh, Contractor, Dhanbad. If so, whether the management of Bhagaband Colliery under Putkee Belihari Area of M/s. Bharat Coking Coal Ltd., is justified in not regularising/departmentalising these workmen as miner/loader ? If not, what relief these workmen are entitled to?"

ANNEXURE

1. Shri Jogeshwar Singh, S/o Lali Singh
2. Shri Krishnakant Mishra, S/o Jagdish Mishra
3. Shri Baleshwar Paswan, S/o Paru Paswan
4. Shri Laxman Singh, S/o Jagannath Singh
5. Shri Ramchandra Gope, S/o Nanku Gope
6. Shri Chhotulal Singh, S/o Sakaldev Singh
7. Shri Asambhar Uraon, S/o Dinu Uraon
8. Shri Panchdev Singh, S/o Jamuna Singh
9. Shri Chandeshwar Singh, S/o Gulab Chandra Singh
10. Shri Sahdeo, S/o Bholenath Ghoshal

11. Shri Suresh Prasad, S/o Durga Prasad Lal
12. Shri Khitod Prasad, S/o Jagdish Prasad Singh
13. Shri Ashok Singh, S/o Rammurti Singh
14. Shri Rajendra Prasad Singh, S/o Ramcharitra Singh
15. Shri Ramkishor Thakur, S/o Ramsakal Thakur
16. Shri Ganesh, S/o Suresh Singh
17. Shri Chotelal Rabidas, S/o Pati Rabidas
18. Shri Sudhir Prasad Singh, S/o Bhagwati Singh
19. Shri Ramnath Singh, S/o Rajeshwar Singh
20. Shri Ramjit Prasad, S/o Jaisree Prasad
21. Shri Ram Praveesh Singh, S/o Dineshwar Singh
22. Shri Kameshwar Prasad, S/o Shrawan Rai
23. Shri Prahalad, S/o Sitaram Singh
24. Shri Upanesh Singh, S/o Hridayanand Singh
25. Shri Sunil Kumar, S/o, Pundev Singh
26. Shri Nardeshwar Prasad Singh, S/o Basistha Singh
27. Shri Arjun Saw, S/o Daulat Nayak
28. Shri Kunwar Singh, S/o Janaki Singh
29. Shri Kanshpati Mahto, S/o Kalbar Mahto
30. Shri Ramayan Singh, S/o Loknath Singh
31. Shri Lalan Sah, S/o Narayan Sah
32. Shri Mathura Mahato, S/o Narayan Sah
33. Shri Pancham Rewani, S/o Chandrika Rewani
34. Shri Mohan Singh, S/o Laxmi Singh
35. Shri Prabhu Singh, S/o Jamuna Singh
36. Shri Sapan Kumar, S/o Raghubir Prasad
37. Shri Amarendra Kumar Singh, S/o Shri Ganesh Singh
38. Shri Goraknath, S/o Jagpat Yadav
39. Shri Pramod Kumar Singh, S/o Shri Bhagwan Singh
40. Shri Swapna Bouri, S/o Indra Narayan Bouri
41. Shri Pravinder Kumar Singh, S/o Chandra Bhanu Singh
42. Shri Bindo Kumar Roy, S/o Udaynath Roy
43. Shri Mithilesh Kumar Singh, S/o Ramayodhya Singh
44. Shri Joy Kishor Prasad, S/o Baijnath Thakur
45. Shri Dhannanjay Kumar Singh, S/o Jogeshwar Singh
46. Shri Uday Prasad Singh, S/o Jagdish Prasad Singh
47. Shri Shatrughan Singh, S/o Swaminath Singh
48. Shri Kamal Mondal, S/o Anil Mondal
49. Shri Shamendra Kumar Singh, S/o Nanan Kumar Singh
50. Shri Basudeve Yadav, S/o Enarman Yadav
51. Shri Shanker Prasad Singh, S/o Bir Bahadur Singh
52. Shri Sunil Kumar Singh, S/o Lachendev Singh.

2. The case of the concerned workmen, as disclosed in the written statement submitted on their behalf of the sponsoring union, Bihar Colliery Kamgar Union deals apart, is as follows :

Jogeshwar Singh and other concerned workmen had been working as permanent underground workman of Bhagaband Colliery of Kondwadih Section since long with unblemished record of service. They had been performing the jobs of underground stone cutters regularly and continuously and on some rare occasion they also performed other permanent nature of underground jobs, such as making duggs for roof supporting and line packing. They had

been performing prohibited category of job continuously and in the process had put in more than 190 days attendance in each calendar year. They had been performing their jobs under the direct control and supervision of the management's competent persons. All the implements for execution of jobs were being supplied by the management. They had been rendering services and producing goods for the benefits of the colliery management. With an ulterior motive to deprive the poor workmen, the management had been disbursing their wages below the rate of NCWA I, II & III in the name of intermediaries. Disbursement of less wages than statutory wages in the name of intermediaries were nothing but legal camouflage. Even the so called intermediaries had been doing the same jobs and were getting the same wages. The so-called contractor did not possess any licence nor the establishment of the management was registered for engagement of contractual workmen in stone cutting job. The concerned workmen were permanent employees of the management. But they were stopped from duty by the management in violation of the mandatory provision of industrial law. A decision was taken by the management in consultation with all the Central Trade Unions to absorb all the underground contractors workmen engaged in prohibited category of jobs who had put in 190 days attendance as miner/loader. In pursuance of the aforesaid decision which was communicated to all the General Managers by order dated 8/9-5-86 issued by the Director (Personnel), the union demanded that the concerned workmen should be regularised as miner/loaders as per company decision. As per the aforesaid circular a large number of underground contractors workmen have been regularised as miner/loader. Though legally the concerned workmen were employees of the management and were entitled to be regularised as stone cutters with retrospective effect with all arrears of wages, even then the union offered during the course of conciliation proceedings to settle the issue as per management's aforesaid circular. It is alleged that the anti-labour management refused to settle the issue amicably which resulted in a failure of conciliation proceedings. Thereupon the appropriate Government has been pleased to refer the dispute for adjudication to this Tribunal. The concerned workmen had worked as underground workmen since long from 1983-86 still then they were illegally stopped from duty. The action of the management is not regularising/denaturalising the services of the concerned workmen is illegal, arbitrary and unjustified and against the principles of natural justice. In the circumstances, the union has prayed that the management be directed to regularise the concerned workmen in service as miners/loaders with effect from the date of issue of the circular i.e. 8/9-5-1986 with all arrears of wages and back wages.

3. The case of the management of Bhagaband Colliery of M/s. B.C. Ltd., as appearing in the written statement-cum-rejoinder, details apart, is as follows :

The present reference is not legally maintainable. There was no relationship of employer and employee between the management and the concerned persons. Jogeshwar Singh was a contractor engaged for execution of miscellaneous contractual jobs as and when available during the period from the end of 1983 to the end of 1985. He carried on contractual job both on the surface and underground mine intermittently according to the requirement of the management. No regular contract of any specific type was allotted to him. The contractual jobs allotted to him were of petty nature and at no point of time he could engage more than 15 workmen at a time. It is therefore absurd that he could engage the concerned persons numbering 52 on his contractual jobs. Anyway, the contractual jobs con-

sisted of mainly CIVIL Stores and renovation works. The jobs were casual in nature and were carried on casually from time to time. The concerned unemployed persons with the connivance of the Contractor, Jogeshwar Singh have conspired together to make out the present case with the hope to enter into the services of the management on false representation of facts. The management in conciliation with the major trade unions including the sponsoring union took the policy decision in the year 1986 to enroll the underground contractors workmen who had put in 190 days attendance in any calendar year during 1982 to 1986 as miner/loaders. All the contractors workmen who had put in 190 days attendance in underground mine in any calendar year from 1982 to 1985 were taken on the roll of the colliery and the contractual work in underground mine was stopped. As the concerned persons did not fulfil the conditions to come within the purview of the provisions of policy decision of 1986, they were not taken on the roll of the colliery.

4. In rejoinder to the written statement of sponsoring union, the management has stated that all the contractors workers having put in 190 days of attendance in any calendar year from 1982 to 1985 were taken on the roll of the management as miners/loader in the year 1986 as per policy decision of the management. The concerned persons were not working under any contractor in any underground job and did not apply for the jobs of miner/loaders in 1986. They were job seekers and approached the Contractor, Jogeshwar Singh to make out a case for them. Thus, Jogeshwar Singh started the business of providing employment to job seekers after collecting huge advance money from them. A contractor engaging less than 20 workmen is not required to obtain licence from the Controlling Authority. Similarly no registration of contractor's name is necessary for carrying on casual contract jobs according to requirement.

5. In rejoinder to the written statement of the management, the sponsoring union has asserted that it is absolutely false to submit that Jogeshwar Singh was a contractor engaged for execution of miscellaneous contract jobs as and when available. It is also false to allege that he carried on contract jobs both on the surface and underground intermittently. The concerned workmen have been working in permanent nature of job and had put in 190 days attendance in each calendar year. It is false to suggest that the concerned workmen are unemployed persons and had conspired with Jogeshwar Singh to sneak into the employment of the management. It is also absolutely false to suggest that all the underground workmen having put in 190 days attendance in 1983 to 1985 have been regularised in service by the management.

6. The union, in support of its demand, has examined two witnesses, namely, WW-1 Lalan Saw and WW-2 Jogeshwar Singh and laid in evidence some documents which have been marked Exts. W-1 series, W-2 series and W-3 series.

On the other hand, in refutation to the claim of the sponsoring union, the management has examined three witnesses, namely, MW-1 Ram Chandra Saw, presently working in Bhagaband colliery as General Clerk, MW-2 S.C. Pathak, working in Bhagaband Colliery since 1984 as Cashier and MW-3 Arjun Kumar Khosla, working in Bhagaband Colliery as Assistant Manager since 1980 and laid in evidence a sheaf of documents which have been marked Exts. M-1 to M-4/16.

7. The case of the sponsoring union is that the concerned workmen had been employed by the management on prohibited category of job as underground stone cutters and they had been performing the same jobs continuously and regularly and on some rare occasion they also performed other permanent nature of underground jobs, such as, making duggis for roof supporting and line nacking and in the process they had put in attendance for more than 190 days in each calendar year. It is the further case of the union that the concerned workmen had been performing their jobs under the direct control and supervision of the management's competent persons and all implements for execution of the jobs were

being supplied by the management and that they had been rendering services and producing goods for the benefits of the management. But the management was disbursing less wages than the statutory wages in the names of intermediaries which was nothing but legal camouflage. The union has also complained that the management had stopped the concerned workmen from duty without complying with the mandatory provisions of Sec. 25-F of the Industrial Disputes Act.

8. In answer to the claim of the sponsoring union, the management has asserted that there existed no relationship of employer and employee between the management and the concerned workmen and that one Jogeshwar Singh was engaged as Contractor for execution of miscellaneous jobs as and when available during the period from the end of 1983 to the end of 1985. It is the further case of the management that the contractor executed the jobs on the surface and in underground according to the requirement of the management intermittently. It has been alleged by the management that some un-employed persons connived with Jogeshwar Singh to make out the present case with the hope of entering into the services of the management on false representation.

Both the management and the sponsoring union have stated that a policy decision in 1985 was taken to enroll underground contractors' workers who had put in 190 days attendance in any calendar year during 1982 to 1985 as miner/loaders.

9. WW-1 Lalan Saw, one of the concerned workmen, has stated that all the concerned workmen had been working in Bhagaband colliery of M/s. B.C.C. Ltd. since 1983 and that they had been working in underground mine. His evidence reveals that the colliery was working in three shifts and all of them had been working in three shifts as per direction and requirement of the management. According to him, the nature of jobs performed by them were stone cutting, boring in coal, making of duggies, making of drain and sumps and that the nature of job performed by them was of permanent in nature. In the course of performance of duty, according to him, they had to go to Cap Lamp Room for taking cap lamp to record their attendance which sometime was recorded in 'Chutka' and sometime in 'Khata', to take out materials from the stores of the company and to proceed to underground mine for execution of jobs. In the underground mine they used to work under the supervision of the management. He has asserted that from 1983 till they were stopped from duty in 1986 they had worked continuously in underground mine of Bhagaband colliery and in the process each of them had completed 240 days attendance. He has also stated that Jogeshwar Singh was their co-worker and he used to perform the same nature of job as they used to perform. He has denied that they were workmen of Jogeshwar Singh or that Jogeshwar Singh used to supervise their work and provide them with work implements. In cross-examination he has stated that they did not get any paper from the management showing that they were directly employed by the colliery management. In cross-examination, when asked, he has stated that Asfudin, R.K. Ram, Sitaram Prasad and 2/3 Sahabs used to show their work place. He has denied the suggestion that they were workmen of Jogeshwar Singh or that they had put 210 days attendance in any calendar year. There is nothing on record to indicate that Asfudin, R. K. Ram, Sitaram Prasad were not the employees of Bhagaband Colliery.

10. WW-2 Jogeshwar Singh, another concerned workman, has stated that they had been working in underground mine of Bhagaband colliery since 1983 and the nature of jobs performed by them was stone cutting, coal cutting, making duggi, making of sumps and drains. According to him, the nature of job and that they had been working under the nature of job that was being performed by them is regular supervision of the management with the implements provided by the management. They used to get only Rs. 15/- per head per day as wages and that they worked from 1983 till they were stopped from work in 1985 and in the process they have put in 240 days or more in every calendar year. He has produced some attendance slips issued by the management—both photo copies and originals issued under the signature of Ghosal Sahab, Pit Manager of the colliery which have been marked Ext. W-1 series. It has been suggested to him that these attendance slips Ext/W-1 series are fabricated documents.

The witness has denied this suggestion and had made emphatic statement that they bear the signature of Ghosal Sahab. The management has not disputed that at the relevant time this Ghosal Sahab was posted to the colliery. Besides none of the witness for the management has vouched for the fact that these attendance slips are fabricated documents. These attendance slips bear out the names of almost all the concerned workmen. The management however, has produced some extract of attendance registers for the years 1981, 1982, 1983 and 1984 which contain the names of some of the concerned workmen but none of them has been shown to have worked for 190 days (Exts. M-1 to M-12). This extract of attendance has been prepared by MW-1 Ram Chandra Sao, General Clerk of the colliery. He has admitted in cross examination that attendance of workmen working in underground mine is maintained in Form 'C' Register and that the attendance clerk maintains Form 'C' register at the Pit and that he never maintained Form 'C' Register. Admittedly, the management is the custodian of Form 'C' registers. It is not the case of the management that Form 'C' Registers for the relevant period are not available. Had these registers been produced, the true position regarding attendance of the concerned workmen in underground mine could have been ascertained. Since the complete Form 'C' register for the relevant period have not been produced by the management, the extract of attendance prepared by the management cannot be treated as exact attendance of the concerned workman in Bhagaband Colliery for the relevant period.

11. In case of the management is that Jogeshwar Singh, a contractor, was engaged for execution of miscellaneous contract job as and when available during the period from the end of 1983 to the end of 1985 and that he carried on contractual job intermittently both on the surface and in the underground mine according to the requirement and that no contract of any specific type was allotted to him. The management has filed carbon copies of some work orders issued to the contractor, Jogeshwar Singh dating back from 25-11-81 till 1-8-85 (Exts. M-3 to M-3/16) and the bills submitted by the contractor upon execution of work orders (Exts. M-4 to M-4/16). But these work orders and bills do not represent the actual contractual work done by Jogeshwar Singh. That will be obvious from some of the bills of the contractor submitted by the union (Ext. W-3 series-13 in number). These bills are signed by Jogeshwar Singh. Jogeshwar Singh, while deposing before this Tribunal has proved these bills and tried to clarify the position by stating that he had to sign these bills under compulsion otherwise the management threatened to stop him from work. He has emphatically asserted that he was not a contractor as alleged by the management. Anyway, some of these bills and work order indicate that the contractor was engaged for doing miscellaneous jobs and also for the jobs of making duggies in stone and jhama, driving gallery in stone and jhama, drivage in coal etc. These bills demolish the case of the management that the contractor was engaged for doing miscellaneous jobs only. As a matter of fact, in answer to the claim statement of the union before Asstt. Labour Commissioner (C), the Agent of the colliery stated that "the contractor Jogeshwar Singh was awarded contract for working in 1983, 1984, 1985 and 1986 but his contract was mainly for doing different type of civil construction, like line packing etc. He was on emergency given contract for stone cutting etc. but this job was given to him only intermittently on interval for snap period..... It is submitted that the management has erred for awarding contract in prohibited category for which the management may be censured, but the Act does not confer any right on the workers to claim for employment". Thus, it is evident that the contractor was employed on the job of stone cutting which was declared prohibited by Notification issued by the appropriate Government on 1-2-1975 under the provision of Contract Labour (R.C.A.) Act, 1970. The management has produced 9 (nine) Cash Books of Bhagaband Colliery for the years 1983-84 to show that disbursement of amount in cash to various persons including the contractor, MW-2 S.C. Pathak has produced these Cash Books. He has stated that when the billed amount was Rs. 500/- or less payment was used to be made in cash from the colliery and when the amount was more the same used to be paid from the Area office of the colliery. Overwhelming majority of bills produced by the management and the union are for amount for more than Rs. 500/-. Obviously these payments were not made from the colliery end. Hence, the Cash Books do not at all reflect actual state of affairs with regard to payment made to the contractor through Cash Books.

12. MW-3 Arjun Kumar Ghosal, Asstt. Manager of Bhagaband Colliery since 1980 has stated that Jogeshwar Singh was not given contractual job on regular basis and that he was doing miscellaneous jobs in the colliery intermittently. This statement of Shri Ghosal that Jogeshwar Singh was given miscellaneous contractual job is not correct for the bills of the contractor reveal that he was also engaged for the job of stone cutting which is prohibited category of job in the sense that engagement of workmen through contractor is prohibited on this category of job. Hence, the action of the management in engagement of contractor on prohibited category of job is nothing but illegal. Anyway, Shri Ghosal has admitted that the workmen working in underground is required to have their attendance marked in Form 'C' Register and their names also appear in Cap Lamp Register. I have also stated that these Form 'C' registers have not been produced by the management nor has the management produced Cap Lamp Register. Shri Ghosal has stated that so long the colliery shall exist winning of coal, dressing of the same, stone and earth cutting will continue. He has also admitted that since the work in underground mine is hazardous job, the Overman and Senior Overman are required to look after safety arrangement and that all works done in the underground mine is required to be supervised by competent person, such as, Senior Overman, Overman and Mining Sirdar and that the jobs of stone cutting, coal cutting, and earth cutting are required to be supervised by the competent persons. He has further stated that the management produces cap lamp, shoes helmet, explosive, drill rods to the workmen working in underground mine.

13. From the evidence on record, it is abundantly clear that the concerned workmen, through the so-called arrangement with Jogeshwar Singh, were engaged by the management of Bhagaband colliery for doing miscellaneous job and also for doing prohibited category of job, such as, stone cutting in underground mine from 1983 till they were stopped from work in 1986 and in the process each of them have completed atleast 190 days attendance in every year. The concerned workmen had been working under the supervision of the management and their work implements were supplied by the management. Admittedly, their place of work belonged to the management and they were rendering services for the management. In such circumstances, lifting the veil of make-believe arrangement, they shall be considered to be the workmen of Bhagaband Colliery [1978 Lab. I.C. 1264 Hussainbhai VS. The Alath Factory Fezhilali Union followed in 1991 Lab. I. C. 1062 (Cal)—Divisional Manager, Eastern Railway VS. Satyajit Mazumdar]. This being so, I hold that there existed relationship of employer and employee between the management of Bhagaband Colliery and the concerned workmen.

14. Shri B. Joshi, learned Advocate for the management, has contended that the contractor's workmen cannot claim to be the employees of the principal employer and in support of this contention he has referred me to a decision reported in 1992 Lab. I.C. 75 (Denanath and others VS. National Fertilizer Ltd. and others). I am constrained to state that the decision referred to by Shri Joshi does not lay down any such proposition. It has been held by their Lordship of Supreme Court that the only consequence provided in the Contract Labour (Regulation and Abolition) Act, where either the principal employer or labour contractor violates the provisions of Sec. 9 and Sec. 12 of the Act respectively, is the penal provision as envisaged under the Act for which reference may be made to Sections 23 and 25 of the said Act. In other words, their Lordships of Supreme Court has held that violation of Sec. 9 and Sec. 12 of the said Act does not automatically lead to the conclusion that the contractor's workmen are the workmen of the principal employer. In the present case also the contractor had no licence nor the establishment of the management was registered for employment of workmen through the so-called contractor. Anyway, that does not lead to the conclusion that the concerned workmen are the workmen of the principal employer. But considering other facts and circumstances, such as, place of work belonging to the management, the work done by the workmen being integral part of the establishment of the management, services rendered by them were for the management and they were broadly under the control of the management, I have held that they are really the workmen of the management although a make-believe arrangement was made by employing them through contractor. This being the position, 2512 GI/92—

all the concerned workmen shall be treated as the workmen of the management of Bhagaband Colliery and that they have worked in the colliery from 1983 to sometime in 1986 in various jobs including the job of stone cutting. Hence, they are entitled to be departmentalised as General Mazdoor in Category-I under the management of Bhagaband Colliery with effect from the date of present reference i.e. 8-5-1990 and paid wages as per N.C.W.A.-IV.

15. Shri D. Mukherjee, authorised representative of the sponsoring union, has made carping criticism of the allegation of the management in the written statement that the concerned workmen, being un-employed persons, have conspired together with the connivance of the contractor, Jogeshwar Singh to make out the present false case with the hope of sneaking into the services of the management on false representation of facts. He drew my attention to the specific denial of this allegation of the management in rejoinder to the written statement of the management. He has submitted that the management has not laid any whit of evidence to substantiate this allegation.

The position is really so. It appears that the management has made such allegation and the union has denied the same. The management has not laid any evidence supportive of this allegation.

Such unsavoury allegation without any attempt to substantiate it does not behave well specially for a public sector undertaking such as, M/S. B.C.C. Ltd. Anyway, I leave the matter here without any further comment.

16. In view of my foregoing discussion and findings, the following award is rendered—

Jogeshwar Singh and 51 other workmen as per list annexed had actually worked in Bhagaband Colliery during 1983 to sometime in 1986 in various jobs including the job of stone cutting. The management of Bhagaband Colliery under Putkee Bahari Area of M/s. B.C.C. Ltd. is not justified in not departmentalising these workmen. The management is directed to departmentalise them upon reinstatement as General Mazdoor in Category I and pay them wages as per N.C.W.A. IV with effect from 8-5-1990.

In the circumstances of the case, I award no cost.

This is my award.

S. K. MITRA, Presiding Officer

का.आ. 2735.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिण्डिकेट बैंक के प्रबंधन के संबद्ध निदेशकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचपट को प्रकृति करता है, जो केन्द्रीय सरकार को 24-9-92 को प्राप्त हुआ था।

[संख्या एल-12012/213/89-डी-2 (ए) एल-12011/37/89-डी 2 (ए)]
के.वो.बी. उण्णो, डेस्क अधिकारी

New Delhi, the 25th September, 1992

S.O. 2735.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the industrial dispute between the employers in relation to the management of Syndicate Bank and their workmen, was received by the Central Government on 24-9-1992.

[No. L-12012/213/89-D.II(A) L-12011/37/89-D.II(A)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated this 14th day of September, 1992

PRESENT :

Sri M. B. Vishwanath, B.Sc., B.L., Presiding Officer.

Central Reference No. 63/89
Central Reference No. 8/90

I PARTY

(C.R. 63/89)

Sri Ratnakar Poojary,
S/o Kuppa Poojary,
Budnur,
P.O. Kunjibetty,
Udupi-576101

V/s.

II PARTY

(C.R. 63/89)

The Chairman,
Syndicate Bank,
Head Office,
Manipal-576119.

I PARTY

(C.R. 8/90)

The Secretary,
Syndicate Bank Employees'
Union, Karnataka State
Committee, P.B. No. 165,
Sector 2, Plot No. 1,
behind Hotel Ramdev,
Mal Maruthi Extension,
Bangalore-590010.

V/s.

II PARTY

The Chairman,
Syndicate Bank,
Head Office,
Manipal-576119.

COMMON AWARD

In these references made by the Hon'ble Central Government by its Order No. L-12012/213/89-D.II(A) dated 1st September, 1989 and No. L-12011/37/89-D.II(A) dated 5th February, 1990 the point for adjudication as per schedule in C.R. 63/89 is :—

"Whether the action of the management of Syndicate Bank in dismissing from service Sri Ratnakar Poojary, Part-time employee is justified ? If not, to what relief is the workman entitled ?"

The point for adjudication as per schedule in C.R. 8/90 is :—

"Whether the action of the management of Syndicate Bank in dismissing S/Shri P. Gopala, Shekhar Poojary part-time employees and P. Gopalakrishna, Electrician, is justified ? If not, to what relief the said workmen are entitled to ?"

2. To prevent confusion, at the outset I advert to some facts. The workmen involved in C.R. 63/89 is Ratnakar Poojary.

3. The three workmen involved in C.R. 8/90 are Gopala, Shekhar Poojary and Gopalakrishna.

4. A joint enquiry has been held against Gopala, Shekar Poojary (C.R. 8/90) and Ratnakar Poojary (C.R. 63/89). A separate enquiry has been held against Gopalakrishna who is one of the workmen in C.R. 8/90.

5. A second enquiry has been held against Ratnakar Poojary in respect of another incident which relates to theft.

6. Evidence has been recorded on the preliminary issue in C.R. 63/89. On 8-4-91 in view of the memo dated 5-4-91 filed by the Advocate for the II party, it has been stated in the order sheet that since charges are similar in C.R. 63/89 and C.R. 8/90 and since joint enquiry was held, common evidence shall be recorded in both the references except Gopalakrishna. Separate enquiry has been held against Gopalakrishna because incident relating to him is different. The confusion has been caused because Gopalakrishna's also also has been referred in C.R. 8/90.

7. There would not have been any confusion in understanding the facts if there had been a separate reference in

respect of Gopalakrishna and Ratnakar Poojary now shown in C.R. 63/89 had been included in C.R. 8/90 in place of Gopalakrishna. In other words this Gopalakrishna should not have been shown in C.R. 8/90.

8. There are in all three departmental enquiries in these two references. A joint enquiry (Ext. M-1 enquiry proceedings) against Gopala, Shekhar Poojary shown in C.R. 8/90 and Ratnakar Poojary shown in C.R. 63/89, a second enquiry (Ext. M-9 enquiry proceedings) against Gopalakrishna only in respect of a different charge, a third enquiry (Ex. M-16 enquiry proceedings) against Ratnakar Poojary in respect of separate incident of theft.

9. This Tribunal by a common considered order dated 31-5-92, has held on the preliminary point that the three departmental enquiries held against the I party members are fair and proper, in accordance with principles of natural justice.

10. E. M-1 proceedings book relates to the three workmen Gopala, Ratnakar Poojary and Shekhar Poojary. The charge against Gopala, Ratnakar Poojary and Shekhar Poojary is that :

They being part-time employees in the subordinate staff, showed wilful insubordination and disobeyed lawful and reasonable orders of the management/superiors. They neglected the work and showed negligence in their work. These workmen were attending to the work of fetching diesel for the generator of the Bank through M/s. Western Roadways by using hand cart provided to them. These three workmen on 25-11-86 were entrusted with the said work to fetch diesel and directed to report the matter to the Divisional Manager or to the maintenance section as soon as the entrusted work was over. They refused to carry out this work.

11. Ex. M-9 is the proceedings book relating to Gopalakrishna against whom a separate enquiry was held because the incident was different. The charges against Gopalakrishna as per charge sheet Ex. M-11 are :

(i) That on 26-8-86 at about 6.20 p.m. Gopalakrishna had unauthorisedly stopped the generator, which was the main source of power supply to computer division, though his duty hours were upto 9.00 p.m. Since he was not available to run the generator, the management was forced to make alternative arrangement.

On 21-10-86 Gopalakrishna abruptly stopped the generator at about 8.40 p.m. though the generator had to be run till 9.00 p.m. This caused serious disruption to work at the Electronic Data Processing Division besides causing additional financial burden to the Bank.

He has abruptly stopped the Generator at about 8.40 p.m. on seven other occasions. Thus he has committed gross misconduct prejudicial to the interest of the Bank.

(ii) On 11-11-86 at about 10.30 a.m. he marked the attendance register and left the office unauthorisedly without working. On 11-12-86 he was required to come for duty at 7.00 a.m., but he came only at 1.00 p.m. and marked the attendance register. On seven other occasions (shown in the charge sheet) he has signed the register but did not report for seeking work orders. Thus he has shown wilful insubordination and disobedience of lawful orders of the Superiors and neglected his work.

(iii) Gopalakrishna was orally and in writing instructed to sign his attendance in the separate register maintained by the Maintenance section, since his work was being supervised by them. But he continued to sign in the earlier register, though his name had been deleted. Thus he has committed gross misconduct of showing wilful insubordination and disobedience.

12. Ex. M-16 is the proceedings book relating to the enquiry held against Ratnakar Poojary who the workman in C.R.

63/89 (who is also one of the workman in Ex. M-1 enquiry proceedings). Ex. M-16 relates to another enquiry against Ratnakar Poojary in respect of a separate incident.

14. As per the charge sheet contained in Ex. M-16, the charge against Ratnakar Poojary is :

On 31-10-86 at about 2.30 p.m. Ratnakar Poojary stealthily removed one length of G.I. half an inch pipe belonging to the bank which was kept near the toilet block of the Head office premises and after taking this pipe from the bank premises, he kept it near the shop of Suresh Electricals, Manipal.

15. As I have already stated the three D. Es. have been held to be fair and proper.

16. After the D.Es. were held fair and proper the two references were posted for arguments regarding victimisation, perversity of the findings of the Enquiry officer and adequacy of punishment.

17. It should be stated at the outset that there is absolutely no material on record nor has any evidence been adduced to show that the workmen in these references have been victimised.

18. Ex. M-8 is the report of the Enquiry officer with regard to the joint enquiry held against Gopala, Shekar Poojary and Ratnakar Poojary. I will discuss first the perversity or otherwise of the findings in respect of these workmen.

19. As per Ex. M-8, report of the findings the E.O. has held that in respect of the three workmen mentioned in the para above (part-time employees) the minor misconduct of negligence of work and negligence in performing duties as clause 19.7(cc) of B.P.S. was not proved. So far as the gross misconduct of wilful insubordination and disobedience of the lawful and reasonable orders of the superiors is concerned, the E.O. has held that the charge was proved against all the nine employees which includes the present three workmen.

20. As has already been stated Ex. M-8 is the report of the E.O. in which he has given his findings in respect of the joint D.E. held by him against the present three workmen and six others. The E.O. has referred to the evidence of management witness Shettigar in detail. This Shettigar was working as an officer in Maintenance division of the II party. MW-1 has sworn to the duties and the allegations in the show cause notice (charge sheet) against the employees. This witness has spoken to the duties and also the entrustment and the gross misconduct of wilful insubordination and disobedience of the lawful and reasonable orders of the superiors. The E.O. has analysed the evidence of this witness MW-1 Shettigar. It is this Shettigar who has produced 14 documents viz., Administrative orders issued to the part-time employees, work orders issued to the employees. All these documents are usual routine official documents. They have been marked through the management witness Shettigar. It is argued by the Learned counsel for the I party that the authors of all these documents have not been examined and so the findings given by the E.O. as per Ex. M-8 without examining the authors of the documents is perverse. The Learned counsel for the I party workmen relied on the decision of our Hon'ble High Court in W.A. No. 1277/91 dated 24-3-92 in which the decision of the Single Judge his Lordship the Hon'ble Mr. Justice N. Y. Hanumanthappa was confirmed. I have carefully and respectfully read the decision of the Hon'ble Single Judge and also the decision of the Bench His Lordship the Hon'ble Mr. Justice N. Y. Hanumanthappa was pleased to hold, "the persons who should have been examined were not examined by the management". This order in the writ petition has been confirmed by his Lordship the Hon'ble Mr. Justice K. Shivashankar Bhat in W.A. No. 1277/91.

21. The case of the I party was that he travelled to Srinagar by bus No. TNA 8586 of Gem Tourist Corporation and produced a receipt issued by the Gem Tourist Corporation. The management produced a letter by the Proprietor Govinda Swamy of bus T.N.A. 8586 to the effect that he (Govinda Swamy) had not given that bus to the Gem Tourist Corporation during the relevant period. This Govinda Swamy who was a material witness was not examined in the D.E. to

prove that he had not spared the bus to Gem Tourist Corporation and that the employee had not travelled by that bus. D.E. was set aside by our Hon'ble High Court since the author of that letter Govinda Swamy was not examined to contradict the stand of the employee. So in my humble opinion the authority of our Hon'ble High Court is not applicable to the facts of the present case.

22. It is argued by the Learned Counsel for the I party workmen that the approved containers as per Section 5(4) of the Petroleum rules 1976 were not provided to the workmen and so they were not duty bound to bring diesel in the hand pulling cart provided to them by the management. There is no substance in this argument because this provision is applicable only when quantity in excess of 2,500 Litres has to be fetched. This is clear from Section 3(3) of the said rules. So the observation of the E.O. whether the Petroleum Rules 1976 are attracted or not is not the question before him does not matter much. The E.O. has noted that since the installation of the generator the duty of fetching diesel was entrusted to the part-time employees and was carried out by them. If it were not the duty of the employees, they should have objected to it pretty long ago. The refusal to carry out the instructions is a misconduct as per clause 19.5(e) of the B.P.S.

23. In view of the discussion above, I am of opinion that there was enough material before the E.O. to come to the conclusion and give the findings as per Ex. M-8. It cannot be said that the findings given by the E.O. is perverse. I hold accordingly.

24. Ex. M-1 shows that the employees in question and the six others have been given personal hearing. It bears repetition that a joint D.E. was held against the present three workmen and six other workmen. Personal hearing, after issuing second show cause notice was given to all the nine employees. The personnel manager accepted the findings given by the E.O. and ordered dismissal of the present three part-time employees. The appeals filed by the workmen before the DGM(P) were rejected. In the circumstances of the case it should be borne in mind that the other six employees who were tried alongwith the I party members were awarded the punishment of stoppage of next two increments with the effect of postponement of future increments. This is clear from Ex. W-1 to W-17 produced by the I party members.

25. It is argued by the Learned Counsel for the I party workmen that there is discrimination in awarding punishment because the present three workmen have been dismissed while the other six part time employees have punished with only stoppage of two increments. The Personnel Manager has given the punishment of dismissal to the present three workmen "keeping in view the and also your past records". This is what is stated in second show cause notice.

26. In view of the fact that past records of the present three workmen have been taken into consideration, the Tribunal has to see whether the past records have been taken into consideration in the manner provided by Law.

27. In the second show cause notice what is mentioned is "your past records". Nothing more. The details of the past records have not been set out. I have carefully gone through the order in which the punishment has been awarded. Even in its order dated 6-9-87 what is stated is "taking into consideration his past records". Nothing more. The details of the past records have not been set out even in the order. It bears repetition. What is stated in the second show cause notice is "your past records". The details are not given. Nor the details of the past records are discussed in the order awarding punishment. Even the management witness Shettigar who was examined in the D.E. has not stated anything about the past records of the three workmen. No doubt the so-called past records of the workmen have been produced in the enquiry proceedings book Ex. M-1. The Learned counsel for the I party brought to my notice all these past records. But it is abundantly clear that those documents relating to the past records have not been marked in the D.E. When they are not been marked or specifically put to the workmen, this Tribunal cannot consider those records relating to past bad records in view of the law laid down

by our Hon'ble High Court in 1991 Lab. I.C. 2471 (K.S.R. I.C. V/s. Nagendrappa). Repelling the contention that the Labour Court ought to have taken into account the bad track record of the workman, our Hon'ble High Court has been pleased to observe that those records were "at best nestling in the records of the D.E.". Our Hon'ble High Court has been pleased to hold further "that however is not sufficient". As to how the past bad record should be taken into consideration by the Tribunal, our Hon'ble High Court has held in the authority referred to above :—

"I have said times without number that it is futile to highlight lapses on the part of the Court in not taking into account the bad track record, unless its attention is specifically drawn to the same (sic) having been produced in an appropriate manner before the Labour Court simultaneously drawing the attention of the workman to such document and an opportunity given to the workman to be heard regards taking into account the bad track record, with a view to justify the punishment imposed on him. If that is not done, it is clearly a case of the man being condemned without being heard and when that happens, I need hardly add that it would have resulted in not merely transgression but a total discrediting of the principles of natural justice."

From the Law laid down by our Hon'ble High Court it is clear that the bad track record of the workman, with a view to justify the punishment imposed on him has not been drawn to the attention of the workman when one of the workman Ratnakar Poojary was in the box. The E.O. who has deposed in this Tribunal does not also speak to the past records. Whether all the workman are examined are not, it was obligatory on the part of the II party to prove the past record of the workman specifically in view of the law laid down by our Hon'ble High Court, though the details of past records are given in the counter statement. The E.O. examined in this Tribunal, as has already been stated, does not speak to the past records of the workman. Even the disciplinary authority does not refer to the details of the past records. When the workman Ratnakar Poojary was examined in this Tribunal his past records have not been put to him. In the said authority our Hon'ble High Court has been pleased to hold :—

"that if the workman had not been given a chance of taking any stand in regard to his past misdeeds either by the disciplinary authority or before the Labour Court, he cannot be nailed to the wall."

In view of the law laid down by our Hon'ble High Court, punishment awarded to the present three workmen taking into consideration alleged past records cannot be allowed to stand. If this is the position, in view of the law laid down by our Hon'ble High Court, it would mean that the present three workmen should be given the same punishment as the other six persons who were tried jointly with them. The punishment of dismissal imposed on the three workmen in my opinion is disproportionate. If they are given the same punishment as the other six persons who were tried jointly with the present three workmen ends of justice will be met.

28. In the authority of our Hon'ble High Court referred to by me above the Labour Court did not award back wages. There can be no blinking the fact that the present three workmen have caused disruption of the work of II party and put the II party in an embarrassing position by their misconduct. They must not be allowed to completely get away with their misconduct. Therefore I am not inclined to grant back wages to the present three workmen.

29. Ex. M-16 is the proceedings book in respect of the enquiry held against Ratnakar Poojary. I have set out in para 14 the charge against Ratnakar Poojary. He committed theft of one length of G.I. half an inch pipe belonging to bank which has kept near the toilet block of the head office.

30. Now I will take up the case of Ratnakar Poojary in respect of the another incident viz. theft of one length half an inch G.I. pipe. The report of the findings of the D.E. is found at page 61 of Ex. M-16. The E.O. has referred to the evidence of five witnesses MW-1 Umanath, MW-2 Shettigar, MW-3 Premanand, MW-4 Suresh and MW-5 L. J.

Martis. He has discussed the evidence of these witnesses thoroughly in his report. He has also referred to the evidence of two defence witnesses. MW-1 Umanath is a direct witness. This official Umanath received an anonymous call informing that Ratnakar Poojary was taking a pipe from the premises of the bank. Immediately, informing of this anonymous call to his superior officer MW-2 Shettigar, he went to terrace and saw the workman Ratnakar Poojary removing the pipe of the Bank. MW-2 also witnessed the incident from the cabin. The evidence of MW-1 has been corroborated by MW-2 on all material particulars. I have carefully gone through the report of the findings. I am of opinion there was enough material before the E.O. to come to the conclusion and give the findings he has given in his report. It cannot be said that the findings are perverse.

31. The Learned Counsel for the II party drew my attention to the previous record of this Ratnakar Poojary wherein he had given a confession letter and requested for excuse. This is found in Ex. M-1 at page 188. The past record has not been proved in accordance with law laid down by our Hon'ble High Court and discussed by me above. We have to forget past record. The 1/2" G.I. pipe committed theft of by Ratnakar Poojary is Rs. 126 as per the receipt shown at page 49 of Ex. M-16 issued by Noble Hardwares. So it cannot be said that the misconduct committed by Ratnakar Poojary is serious in nature. To use the language of our Hon'ble High Court in para 5 of the authority "K.S.R.T.C. V/s Nagendrappa" the misconduct "appeared to be a trivial lapse notwithstanding the moral or virtuous aspect". It has been laid down by the Supreme Court in AIR 1989 S.C. 149 (Scooter India Ltd. V/s. Labour Court) at page 151 that erring workman should be given opportunity to reform himself and prove to be loyal and disciplined employee. For these reasons, I am of opinion, the order of dismissal is disproportionate to the magnitude of the charge levelled against the I party workman. The order of dismissal has to be set aside. Accordingly it is set aside. I will award suitable punishment which will be covered in the final order.

32. Now I take up the case of Gopalakrishna the permanent employee who has been dismissed from service. I have set out in para 11 the three charges against the workman Gopalakrishna. On about 9 occasions he stopped generator unauthorisedly forcing the management to make alternative arrangement. The second charge is that he signed the attendance register unauthorisedly, once he came at 1.00 p.m. though directed to come at 7.00 a.m. and marked the attendance register. On 7 other occasions he has signed the register but did not report for seeking work orders. The third charge is that, though directed to sign in a separate register maintained by the maintenance section, he continued to sign in the earlier register, though his name was deleted.

33. Ex. M-15 contains the report of the findings in the proceedings book Ex. M-9. The report Ex. M-15 runs to 11 pages holding all the charges were proved against the workman. The E.O. has referred in great detail to the evidence of management witness Shettigar, maintenance officer. He has referred to the 16 documents produced before him. These documents clearly prove the charge against the workman. All the documents have been marked through MW-1 Shettigar. There is no evidence on behalf of the workman Gopalakrishna. He has produced only a letter. It is argued by the Learned counsel for the I party workman that the I party was not a qualified person to operate the generator and this has not been noticed by the E.O. MW-1 has identified MEX 16 before the D.L. and the stated that the duties of the electrician have been prescribed in clause No. (xii) in part II of B.P.S. MEX 7 shows that the operation of generator has not been characterised as a post carrying special allowance under the B.P.S. It is highly significant to note that the I party workman in his statement before the E.O. did not dispute the fact that he was operating the generator since its installation. There is no force in the argument advanced on behalf of the I party. The E.O. has referred to the communications received from the concerned E.D.P. division showing that the generator was shut down even before time. The daily reports MEX 6 series show that on all these occasions the workman was the incharge of operation of the generator. The E.O. has discussed all these aspects thoroughly in his report. The E.O. has referred to MEX 2, MEX 3 and MEX 7. He has referred to MEX 9 which is a letter issued by the Divisional Manager to the I party workman showing

that the I party workman after marking the attendance did not take work instructions and was not seen in the office after marking the attendance. The E.O. has also referred to the other documents marked through the management witness Shettigar which clearly show that the workman was making his attendance in the earlier register, though directed to mark in a separate register.

34. It is contended by the Learned counsel for the I party workman that the authors of the documents marked in the D.E. have not been examined. The documents marked are all routine documents maintained in the bank. I have already distinguished the authority of our Hon'ble High Court set store by the Learned counsel. For the reasons discussed in his para and two paras above, I am of opinion, there was enough material before the E.O. for the conclusion he reached and the findings he gave in his report Ex. M-15. It cannot be said that there is any perversity in the findings.

35. Now I discuss regarding adequacy or otherwise of the punishment. It is argued by the Learned counsel for the II party that while awarding punishment of dismissal to workman Gopalakrishna his past records have been taken into consideration. In the lengthy counter statement the past bad records of the workman Gopalakrishna do not appear to have been set out. Before the D.E. MW-1 has not stated anything about the past bad records of the workman. There is no evidence before this Tribunal "produced in an appropriate manner" regarding past records. In the second show cause notice proposing punishment it is stated that the past records of the workman were kept in view. What are the past records has not been stated. Even the disciplinary authority who ordered dismissal in respect of the first charge, who stopped next two increments with the effect of postponement of next two increments on the second charge, stoppage of one increment in respect of the third charge accepted stating "taking into consideration all aspects of the case, his past records etc." In his order he has not set out what are the past records. It is abundantly clear that the so called past records of the workman have not been proved in accordance with law laid down by our Hon'ble High Court, referred to above. So the punishment awarded on the ground that the past records of the workman were also considered should be held to be not proper.

36. I have already referred to the Supreme Court authority wherein it has been laid down that the erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee. I completely agree with the argument advanced by the learned counsel for the II party that I party was working in a sensitive field and his abrupt stopping of the generator has caused great inconvenience in the E.D.P. section. The I party workman was a permanent employee. The denial of back wages will be a sufficient punishment.

37. For the reasons stated above I hold (Section 11-A) that the punishment of dismissal is disproportionate to the charge against the workman Gopalakrishna. Accordingly I set aside the order of dismissal.

38. In respect of the second charge two increments have been stopped. In respect of the third charge one increment has been stopped. In the final award I will pass a composite order.

39. In the result, I pass the following :

ORDER

The three part-time employees Gopala, Ratnakar Poojary and Shekhar Poojary shall be reinstated forthwith as such by the II party with continuity of service.

The next two increments of these three workmen shall be stopped with the effect of postponement of their future increments.

No back wages.

The permanent employee Gopalakrishna shall be reinstated forthwith by the II party with continuity of service.

Six increments of the workman Gopalakrishna should be stopped with the effect of postponement of his future increments.

No back wages.

Award passed accordingly accepting the two references

C.R. 63/89 and C.R. 8/90 as stated herein.

Keep the copy of this award in C.R. 8/90.

Submit to Government.

(Dictated to Stenographer, typed by him, corrected, signed

by me).

Dated : 14-9-1992

M. B. IVISHWANATH, Presiding Officer

नई दिल्ली, 25 सितम्बर, 1992

का.ग्रा. 2736.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन ओवरसीज बैंक के प्रबंधन के संबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पत्र के प्रकाशित काल है, जो केन्द्रीय सरकार को 24-9-92 को प्राप्त हुआ था।

[संख्या एल-12012/18/91-आई आर (बो-11)]

के.वो.वो. उष्मा, डेस्क अधिकारी

New Delhi, the 25th September, 1992

S.O 2736.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Indian Overseas Bank and their workmen, which was received by the Central Government on 24-9-92.

No. L-12012/18/91-IR(B.II)]

K. V. B. UNNI, Desk Officer

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 119 of 1991

In the matter of dispute between :
General Secretary,

U.P. Bank Employees Congress,
Through Indian Overseas Bank,
Aminabad,
Lucknow.

AND

Regional Manager,
Indian Overseas Bank,
Regional Office,
10, Ashok Marg,
Lucknow.

AWARD

1. The Central Government Ministry of Labour, vide its notification no. L-12011/18/91-I.R. (B-2) dt. 27-8-91, has referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Indian Overseas Bank in not regularising the services of 49 messengers from the date of their initial engagement as per the list enclosed and also terminating the services of 8 workmen as per the list enclosed? If not, to what relief the workmen entitled?"

2. On 8-7-92, the parties authorised representatives appeared and filed settlement in the case. They prayed that the reference be answered in terms of the settlement. Six copies of the settlement is being enclosed separately with the award which will form part of this award.

3. The reference is decided in terms of the settlement.

ARJAN DEV, Presiding Officer

MEMORANDUM OF SETTLEMENT DATED 20-05-1992

Between
the
Management of Indian Overseas Bank
and
All Indian Overseas Bank Employees Union
Under Section 2(p) and Section 18(1) of the Industrial
Disputes Act, 1947.

Parties Present

1. Shri K. V. Bhatt,
Assistant General Manager,
2. Shri R. M. Muthalagappan,
Chief Officer,
Personnel Administration
Department.
3. Shri B. Jagadish
Officer,
Industrial Relations Department.
4. Shri P. L. Veerappan,
Officer,
Personnel Administration Department.

Representing the Management
of the Indian Overseas
Bank.

1. Shri L. Balasubramanian,
President.
2. Shri K. Nagappan,
Vice President.
3. Shri S. Srinivasan
Secretary.

Representing the All India,
Overseas Bank Employees'
Union.

Preamble

Whereas the All India Overseas Bank Employees Union affiliated to National Confederation of Bank Employees, had raised an Industrial Dispute before the Regional Labour Commissioner (Central) Delhi with regard to the regularisation of temporary employees working in Delhi Region. The demand of the Union was that 19 temporary employees should be confirmed in Bank's service from date of their first engagement. The Union also made a demand that 30 employees who had been confined in the Bank's services with effect from June 1989 should be regularised from the date of their first engagement instead of the date fixed by the Bank.

Whereas 30 employees out of the 49 mentioned above have already been confirmed in the Bank's services with effect from June 1989.

Whereas the Uttar Pradesh Bank Employees Confederation affiliated to National Confederation of Bank Employees, had raised an Industrial Dispute before the Regional Labour Commissioner, Kanpur over the matter of regularisation of 49 temporary employees working in the State of Uttar Pradesh. Their demand was to regularise the services of these messengers from the date of their initial engagement and also reinstate 8 temporary messengers whose services were terminated by the Bank.

Whereas the conciliation proceedings in respect of the above two disputes had ended in failure and accordingly failure reports were signed on 17-09-1990 and 04-03-1991 respectively.

Whereas the Ministry of Labour had decided to refer the two disputes to the Central Government Industrial Tribunal which are now pending before the CGIT, New Delhi and CGIT Kanpur.

Whereas all the 49 temporary messengers connected with the dispute raised by UPBEC are also fullfledged members of the AIOBEU.

Whereas the Uttar Pradesh Bank Employees Congress vide its letter dated 01-05-1992 had authorised the President of the AIOBEU and also the Vice-President of the NCGE to

enter into an agreement with the Management of Indian Overseas Bank in respect of the dispute pending before the CGIT Kanpur (Cited above).

Whereas the parties have since discussed the said demands/issues on several occasions and have come to a settlement on some of the special demands/issues, which settlement is recorded hereunder ;

The parties agree that the matters agreed to under this settlement shall be binding on them in terms of Section 18(i) of the Industrial Disputes Act 1947 and that this Settlement shall be filed with the appropriate authorities as required vide Rule 58 of the Industrial Disputes (Central) Rules.

Now therefore it is hereby agreed by and between the parties hereto as follows :

Terms of Settlement:

1. To regularise all the 18 temporary employees who were working in Delhi Region as on the date of raising the Industrial Disputes and that their services would be regularised as enumerated in annexure 'A' (Whereas the Union had made a demand for regularising the services of 19 people whereas it is observed that there are only 18 temporary messengers who are party to the Dispute.)

2. To regularise the services of all the 49 temporary employees working in the State of Uttar Pradesh as on the date of raising the dispute and that their regularisation would take effect from the date as given in annexure 'B'.

3. The Union also agreed that they will not be quoting this as a precedent in the case of temporary employees whose services were already regularised by the bank.

4. It has also been agreed to regularise the services of few other temporary employees working in the Regions of Delhi and in the State of Uttar Pradesh. The details are as given in annexure 'C'.

5. With regard to the 8 temporary messengers of the State of Uttar Pradesh whose services had been dispensed with by the Bank, it has now been agreed to reconsider their cases on merits, subject to their complying with out norms for recruitment.

6. The process of regularisation of the services of the temporary messengers cited above would be subject to such temporary employees being in conformity with the usual norms of recruitment of the Bank and the various Government guidelines laid down for such purposes.

7. Notional seniority would be considered only from the date of regularisation of services. No arrears would be payable from that period. However, they would be eligible for medical aid expenses term (1), leave etc.

8. In respect of the proceedings now pending before the Tribunal viz. CGIT Delhi and CGIT Kanpur, this agreement will be submitted to the respective tribunals with the request for "Consent Award" on these terms.

For the Management

For the Union

1. Shri K. V. Bhatt, Assistant General Manager, 1. Shri L. Balasubramanian President

2. Shri R. M. Muthalagappan Chief Officer, Personnel Administration Department

3. Shri B. Jagadish Officer, Industrial Relations Department.

4. Shri P. L. Veerappan Officer, Personnel Administration Department

2. Shri K. Nagappan,
Vice President
3. Shri S. Srinivasan ;
Secretary.

Witnesses :

1. Shri G. Krishnan, Officer,
Industrial Relations Department.
2. Shri T. K. A. Khan Mohammed,
Deputy General Secretary.

ANNEXURE 'A'

List of Candidates in Delhi Region

Messengers

| Sl. No. | Name Sarvashri | Effective date of regularisation |
|---------|------------------|----------------------------------|
| 1. | Jethu Singh | 01-11-1988 |
| 2. | Madan Lal Jarwal | 01-05-1989 |
| 3. | K. Govindan | 01-12-1990 |
| 4. | Govind Kumar | 01-12-1990 |
| 5. | Raj Kumar | 01-12-1990 |
| 6. | Charan Singh | 01-06-1991 |
| 7. | Ashwani Kumar | 01-06-1991 |
| 8. | Ram Sevak | 01-06-1991 |

Riot Victims

9. Joginder Kaur 17-07-1987
10. Shyam Kaur 30-06-1987

Watchman

1. Chand Ram 01-01-1989
2. Beli Ram "
3. Mohan Bahadur "
4. Budhi Bahadur Gurung "
5. Balbir Singh "
6. Daya Chand "
7. Bal Kishan "

Driver

1. Vijender Kumar 01-06-1991

ANNEXURE 'B'

List of Candidates in Lucknow Region

Messengers

| S. No. | Name | Effective date of regularisation |
|--------|----------------------|----------------------------------|
| 1 | 2 | 3 |
| | Sarvashri | |
| 1. | Ramanand | 01-11-1988 |
| 2. | Raghuvir Singh | -do- |
| 3. | Jinku Prasad | -do- |
| 4. | Krishna Kumar | -do- |
| 5. | Kailash Chand | -do- |
| 6. | Ashok Kumar | -do- |
| 7. | Pramod Kumar Mishra | -do- |
| 8. | Raju | -do- |
| 9. | Devidayal | -do- |
| 10. | Mukund Lal Mukherjee | -do- |
| 11. | Kanhai Prasad | -do- |
| 12. | Rakesh Kumar Verma | -do- |
| 13. | Om Prakash | -do- |
| 14. | Jagdish Chandra | -do- |
| 15. | Ram Naresh | -do- |
| 16. | K.N. Tripathi | -do- |
| 17. | Rajpal Singh | 01-05-1989 |

| 1 | 2 | 3 |
|-----|----------------------|------------|
| 18. | Deepa Kumar | 01-05-1989 |
| 19. | Jagdish Raj Kapoor | -do- |
| 20. | Harish Kumar Yadav | -do- |
| 21. | Mohamed Salim | -do- |
| 22. | Ajay Kumar | -do- |
| 23. | Suresh Kumar | -do- |
| 24. | Udai Veer Singh | -do- |
| 25. | Chandra Bhan | -do- |
| 26. | Chaman Beha i | -do- |
| 27. | Mohan Swaroop | -do- |
| 28. | Devinder Singh | -do- |
| 29. | Som Prakash | -do- |
| 30. | Rajinder Singh | -do- |
| 31. | Brij Mohan Sharma | 01-12-1990 |
| 32. | Ram Kishan | -do- |
| 33. | Tilak Raj | -do- |
| 34. | Narendra Kumar | -do- |
| 35. | Ram Chandra | -do- |
| 36. | Jitendra Kumar Singh | -do- |
| 37. | Anil Tkomas | -do- |
| 38. | Ram Prakash | -do- |
| 39. | Subash Chand | -do- |
| 40. | Ugreshan Prasad | -do- |
| 41. | Kurendra Pal | -do- |
| 42. | Vijay Kumar | -do- |
| 43. | Suresh Kumar Pandey | -do- |
| 44. | Suresh Prasad | -do- |
| 45. | Vijay Prakash Sharma | -do- |
| 46. | Atal Pandey | -do- |
| 47. | Rajendra Prasad | -do- |
| 48. | Radhey Shyam | -do- |
| 49. | Nasir Khan | -do- |

ANNEXURE 'C'

List of candidates who were not among the disputants

Delhi Region

Messengers

| S. No. | Name | Effective date of regularisation |
|--------|---------------------|----------------------------------|
| 1. | Babu Lal | 01-06-1991 |
| 2. | Bhajan Lal | -do- |
| 3. | Ram Avtar | -do- |
| 4. | Mahesh Singh | -do- |
| | Watchman | |
| 1. | Hira Singh Gujur | 01-06-1991 |
| | Lucknow Region | |
| | Watchmen | |
| 1. | P. Edward | 01-12-1990 |
| 2. | Dinesh Chand Tiwari | -do- |

नई दिल्ली, 25 सितम्बर, 1992

का.आ. 2737 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबन्धनत्व के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-9-92 को प्राप्त हुआ था।

[संख्या एन-12011/33/90-आई आर(बीII)]
के.बी.बी. उन्नी डैस्क अधिकारी

New Delhi, the 25th September, 1992

S.O. 2737.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the Mgt. of Allahabad Bank and their workmen, which was received by the Central Government on 24-9-1992.

[No. L-12011/33/90 IR (B-II)]
K. V. B. Unni, Desk Officer.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR
PRESENT :

Sri R. K. Dash, J.L.B.,
Presiding Officer,
Industrial Tribunal,
Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 44 OF 1990
(CENTRAL)

Dated, Bhubaneswar, the 15th September, 1992

BETWEEN :

The Management of Allahabad Bank,
Regional Office,
15/C, Bapujinagar, Bhubaneswar.
..... First Party Management.
(And)

Their workmen represented through
All Orissa Allahabad Bank Employees Union,
Central Office,
235, Bapujinagar, Bhubaneswar.

..... Second Party workmen.

APPEARANCES :

Sri Suraj Majhi, Personnel Officer — For the first
Party-management.

Sri N. Mishra, General Secretary — For the second
of the Union.
Party-Workmen.

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred upon it by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short 'Act') have referred the following dispute for adjudication by this Tribunal vide their Order No. L-12011/33/90-IR.B (II) dated 6-12-90 :—

"whether the action of the Management of Allahabad Bank, Bhubaneswar by discontinuing the practice of providing Rs. 18/- as subsidy to each sub-staff per year to purchase shoes from the year 1988 & 1989 is justified? If not, to what relief the workmen are entitled?"

2. In short, the case of the workmen is this : Since 1968 the management of Allahabad Bank was giving financial assistance @ Rs. 18/- to each subordinate staff for purchase of shoes. Though such payment was made till 1987 but suddenly the management withdrew the aforesaid facility when a demand was made by the workmen for increase of the subsidy amount. The further case of the workmen is that the watchmen, drivers, arm guards, and electricians were being paid @ Rs. 36/- for the self-same purpose once in two years and since 1980 the amount had been increased to Rs. 45/- and again to Rs. 60/- in 1988. But in so far as the subordinate staff are concerned, the management instead of acceding to their demand to increase the subsidy took a decision to withdraw the concession altogether. Aggrieved by such action of the management the workmen raised a dispute which was admitted to conciliation and the same having failed, the present reference was made by the Central Government to adjudicate the dispute.

3. The case of the management, on the other hand is that the claim for continuance of the payment of subsidy for

purchase of shoes is not legally tenable. In view of Clause-17(4) of Chapter-XVII of the bi-partite settlement, the subordinate staff of the bank are not entitled to claim any allowance or subsidy for the purpose as aforesaid. However, even though there is clear restriction, but the management made payment of the subsidy for certain years and for extending such benefit the workmen as a matter of right can not claim to continue the same.

4. Keeping in view the pleadings of the parties, the following issues are settled :—

(1) Whether the action of the management of ALLAHABAD BANK, Bhubaneswar by discontinuing the practice of providing Rs. 18/- as subsidy to each sub-staff per year to purchase shoes from the year 1988 & 1989 is justified?

(2) To what relief, if any, the workmen are entitled?

5. In course of hearing, the management examined only one witness. The workmen on the other hand declined to adduce any evidence, either oral or documentary. The dispute being very short and simple, both the issues are taken up simultaneously for consideration.

Witness No. 1 for the management during his examination-in-chief stated that he has absolutely no knowledge about the issue involved in the case. However, it is elicited during his cross-examination that prior to 1988 the management of Allahabad Bank was making payment of Rs. 18/- to each staff for purchase of shoes and only from the year 1988 such payment discontinued for two years on the instruction of the Ministry of Finance, Government of India. According to him, such instruction was of the year 1986 and it was given effect to in 1988. He admits that having discontinued such payment for two years, the management has again started paying subsidy for the self same purpose from 1990 onwards as per the circulars Exts. A and B.

A letter of the Ministry of Finance, Government of India, marked Ext. 1 was sent to the Chairman-cum-Managing Director, Allahabad Bank who circulated the same to all the branches. The said letter contains specific direction that all the benefits available to the bank employees outside their service Rules/Bi-partite settlements should remain frozen. Now the question arises whether in obedience to such letter the management was entitled to discontinue the payment of the allowance/subsidy in question for two years i.e., 1988 and 1989.

6. Section 9-A of the Act prescribes that no employer can effect any change in conditions of service applicable to any workman specified in IVth Schedule without giving that workman likely to be affected by such change a notice in the prescribed manner of the nature of change proposed to be effected. Wages including mode and period of payment are to be treated as conditions of service. "Wages" as defined in Section 2(rr) means all remunerations capable of being expressed in terms of money payable to a workman in respect of his employment and includes all allowances including dearness allowance, the value of house accommodation or of supply of light, water, medical attendance or other amenity or of any service of any concessional supply of foodgrains or other articles. 'Value of other amenity' is a wide term to include payment of Rs. 18/- for purchase of shoes and therefore, such payment is covered under the definition of 'wages'. So, before withdrawal of such amenity it was obligatory on the part of the management to serve a notice as provided u/s 9-A and that having not been done the action of the management in taking unilateral decision for making a change in the conditions of service, as aforesaid, can not be legally held to be valid.

7. In view of my discussion made above I hold that discontinuance of the practice of providing Rs. 18/- as subsidy to each subordinate staff for purchase of shoes in the year 1988 and 1989 by the management of Allahabad Bank is not legal and justified.

The reference is answered accordingly.

Dictated and corrected by me.

R. K. DASH, Presiding Officer.

नई दिल्ली, 25 सितम्बर, 1992

का.भा. 2738 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, न्यू बैंक आफ इण्डिया के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-9-92 को प्राप्त हुआ था।

[संख्या एल-12012/378/88-डी-2(ए)]
के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 25th September, 1992

S.O. 2738.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the Mgt. of New Bank of India and their workmen, which was received by the Central Government on 24-9-92.

[No. L-12012/378/88-D.II (A)]

K. V. B. UNNI, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, PANDU NAGAR, KANPUR.

Industrial Dispute No. 156 of 1988

In the matter of dispute between :

Sri Ashok Kumar Batra C/o Sri O. P. Mathur, 117-K-36 Sarvodaya Nagar, Kanpur.

AND

Regional Manager, New Bank of India, 309- R.A. Bazar, Topkhana, Meerut.

AWARD

1. The Central Government, Ministry of Labour, vide its notification no. L-12012/378/88-D.2(A) dt. 18-11-88, has referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of New Bank of India in terminating the services of Sri Ashok Kumar Batra Peon cum Driver of their Ghaziabad Branch w.o.f. 16-5-87 is justified? If not, to what relief the workman is entitled?"

2. The workman's case in brief is that he was appointed as peon-cum-driver vide letter of appointment dt. 4-7-84. In pursuance of the said letter of appointment he joined the services of the bank as peon-cum-driver on 10-7-84. He alleges that at the time of his appointment there was no condition such as academic qualifications. However, in 1985, the management asked for an undertaking from him that if at any stage he was found to have passed matriculation examination before the joining the service by him in the bank his services might be terminated. According to him such an insistence on the part of the management was wrong and illegal as there is no rule that if an employee has a better academic qualifications his services would be liable to be terminated on this count. In fact the bank has employed more than 100 persons on the post of peons who possessed higher qualification than 8th pass. The workman has then given two names, Sri Satish Sahgal and Sri Baifrang Prasad Tewari, who are posted as peons in the bank's branch at Ghaziabad. Their services were not terminated, rather they were regularised in service. The workman further

alleges that the management gave him a show cause notice dated 7-4-86 calling upon him to explain why disciplinary action be not taken against him. The inquiry officer who was not duly and properly appointed did not give him a fair and reasonable opportunity during the course of inquiry proceeding to defend him. Subsequently, the management served him with memorandum dt. 12-11-86, calling upon him to show cause within 7 days why his services be not terminated. Thereafter the management terminated his services by means of their order dt. 16-5-87. According to the workman the order is illegal inasmuch as the rule of the bank which prescribes maximum qualification of a sub-staff is unreasonable and ultra vires. In the claim statement the workman has referred to certain copies of documents having been filed by him with the claim statement, but actually no such copies of document have been found enclosed with the claim statement. He has, therefore, prayed for his reinstatement with full back wages and continuity of service.

3. The management in their written statement admit that the workman was appointed as a peon-cum-driver by virtue of letter of appointment dt. 4-7-84. According to the management the workman had obtained his employment in the bank as peon-cum-driver by misrepresentation and by deliberately suppressing his true educational qualification. Bank's Recruitment Rules clearly prescribe that such persons as have passed VIII class/middle would alone be eligible for the post of sub-staff. This fact was well known to the workman and despite that he suppressed his and true educational qualification obtained appointment in the bank as a peon-cum-driver. This fact is also got established from the letters of the Secretary, Central Board of Secondary Education dt. 21-1-86 and 12-2-86. Thus it becomes evident that at the time of joining services on 10-7-84 the workman was not eligible for employment in the bank.

4. The management admit that the memorandum was served on the workman and by means of it the workman was called upon to give undertaking that if at any stage it was found that he had passed matriculation before joining the services of the bank his services would be terminated. Such an undertaking was demanded because of certain complaint which were to be inquired into by the bank. The complaint were that the workman had got employment by concealing his true educational qualification. Demanding of such an undertaking, in the above circumstances, cannot be said as illegal. As regards workman's allegation that more than 100 persons are in the employment of the bank who had higher educational qualification than 8th class pass, the management plead that such vague allegations cannot make out a case in favour of the workman. According to the management a valid settlement was signed between the management of the bank & All India New Bank of India Employees Federation on 9-10-82 and by virtue of the terms of the said settlement relaxation was given to some employees who possessed educational qualification higher than 8th pass and their services were regularised as a special case. It was made clear in the settlement that the said relaxation would be given only once to regularise the services of old employees working in the bank.

5. The management admit the giving of show cause notice dt. 7-4-86 to the workman referred to by the workman in the claim statement. According to the management the inquiry officer was validly appointed and during the inquiry the workman was given ample opportunity to present his case. In this connection the management have prayed that the management be allowed to lead evidence in support of the charges if the inquiry is held as violated for any reason. In the end the management plead that the action of the management is fully justified and legal inasmuch as the very initial appointment was procured by the workman fraudulently.

6. In his rejoinder, the workman alleges that at the time when he got his name registered, certificate of VIII pass was only available with him. He denies that he deliberately suppressed from the management of the bank information on the point of his educational qualifications. He has further alleged that he has no knowledge of bank's Recruitment Rules regarding sub-staff.

7. In support of their respective cases both sides have led oral as well as documentary evidence. Whereas the work-

man has examined himself, the management have examined Sri Bijendra Kumar Batra, their Personnel Officer.

8. Ext. M-12 is the copy of Bank's Circular No. ST/21/82 dated 5-4-82, on the subject of employment of Sub-Staff on Temporary Basis. The document has been proved by the management witness by means of his affidavit. In the circular Educational qualifications for the post of sub-staff is given as middle pass. It is specifically stated that candidates having acquired educational qualifications beyond middle class shall not be eligible. The question is whether such a condition can be prescribed by the Employer. In this connection I would like to refer to the ruling in the case of Somdutt Versus State of Haryana & another 1983(3) SLR 141. It was held that—

There appears to be wide variety of reasons for holding that the employer-State, should in law, be entitled to prescribe the qualifications which it may think necessary as tailored to the peculiar needs of the particular post or services. Centrally, it seems somewhat elementary that the employer alone would know what are the specialities and conditions of service or post for which the incumbent is required. Therefore, it would follow that its discretion in seeking the right man for the right job should be left relatively unfettered. Consequently, no doctrinaire rule can be laid down that a technically higher educational qualification is necessarily better or more advantageous for the peculiar needs of a post for which the employer State has prescribed lower qualifications.

On the larger perspective it was submitted and in our view rightly that superlatively higher qualified individuals may not have requisite job satisfaction or motivation in holding a post disquietingly below their academic rank though circumstances for the time being may compel them to accept such a job.

Once qualifications have been laid down by binding statutory provisions, then the concept of the strict compliance therewith would entitle the State to insist that these be meticulously satisfied and extraneous considerations like qualifications other than those prescribed being either the exact equivalents, or technically higher than those would be irrelevant to the issue and indeed may well be contrary to the statutory prescription.

Even though an educational qualification may be higher it may not be necessarily suited to or particularly tailored to the needs of the post. As in the present case where teachers are being recruited for teaching primary classes or even the levels lower thereto, its insistence on a literal satisfaction of the prescribed qualifications of Junior Basic Training or Diploma in Education Training Course, seems to be obviously well marred.

9. In view of the Law laid down in the above ruling it becomes evident that the management could lay down a condition that the candidate should not possess educational qualifications more than VIII pass. So where it is found that a candidate has acquired employment by suppressing his true educational qualifications which are higher than the prescribed one his appointment will become void abinitio in view of the full bench ruling of the Hon'ble High Court of Patna in the case of Rita Misra and others versus Director Primary Education, Bihar, A.I.R. 1981 Patna 26.

10. Now let us examine the evidence of this case. Ext. M. 1 is the photostat copy of the workman's application for appointment to the post of sub staff and Ext. M-3 is the photocopy of his identity form. In both the documents the workman's educational qualification is given as VIII pass. In his cross examination, the workman has admitted that in those two documents he has written his educational qualification as VIII pass.

11. The workman has raised the plea that he was not aware of the fact that candidates possessing educational qualification beyond middle class would not be eligible. In para 4 of his affidavit, the workman has deposed that at the

time of his appointment there had been no such condition regarding educational qualification nor such a condition was made known to him at the time of his interview and later on at the time of his appointment. But this is believed by his own statement made in his cross examination. In his cross examination he has deposed that he did so in order to secure employment. He admits that as per Recruitment Rules of Bank educational qualification for the post of peon cum-driver should not be more than middle pass. Then he has admitted that he had passed higher secondary examination in 1978 i.e. to say much before the joining of services by him in the bank.

12. Ext. W.6/M-9 is the copy of memorandum dated 21-10-1986 issued by the Regional Manager in his capacity as Disciplinary authority to the workman. In the memorandum it is alleged that the workman is aware that the maximum educational qualification for recruitment in the sub-cadre is VIII pass and that he has disclosed his qualification as VIII pass with the District Employment Exchange Ghazipur. It is further stated in the memorandum that the workman is further aware that pursuant to the complaint received by the Head Office he has called upon by memorandum dated 7-4-1986 to offer his explanation particularly in respect of allegation in the said complaint that he was a matriculate. Ext. M. 4, is the copy of the said memorandum dated 7-4-86. It is then stated that in response to bank's memorandum dated 23-8-1985, the workman vide his letter dated 12-9-1985 has stated that he is only middle pass. Ext. M. 7, is the photostat copy of workman's reply dated 12-9-1985. Another fact stated in the memorandum dated 21-10-1986 is that the workman is advised that pursuant to the investigation/inquiry made by the bank it has been revealed that he has passed Delhi Secondary School Examination from the Central Board of Secondary Examination New Delhi, in 1978 as a private candidate. Towards the end of this memorandum, the Regional Manager called upon the workman to show cause why his contract of employment with the bank which was otherwise not valid should not be terminated forthwith.

13. At first it seems the workman avoided to give any reply but ultimately he gave a reply to the said show cause notice dated 21-10-1986 by means of his letter dated 3-12-86 copy Ext. M. 10. In para 3 to his reply he writes that he is only middle pass and that I still maintained that I am only middle pass and nothing more. However in para 4 of his reply he writes that as regards his passing Delhi Secondary School Examination, the fact is not disputed by him but since he had passed it only in III Division such passing of examination by him does not confer upon him any distinction.

14. I have also referred to the workman's statement in cross examination wherein he has admitted the fact that he has passed higher Secondary examination 1978. It is well known fact that Higher Secondary Examination is equivalent to XI pass.

15. After the receipt of his said reply the Regional Manager vide his order dated 16-5-1987 copy Ext. M. 11 terminated his contract of employment forthwith.

16. In view of the fact that limit as to the educational qualifications for the post can be prescribed by the employer, the action of the management in terminating his services cannot be held as unjustified nor it can be held as illegal.

17. The workman, in support of his case, has taken shelter behind the fact that there are many more persons with educational qualifications of more than VIII pass in the subordinate service of the bank whose services have been regularised by the bank and as such being similarly placed his services could not have been terminated by the management. The management have not disputed this fact but the management have taken the plea that if such persons are still in the service of the bank in the subordinate cadre it is because of the settlement dated 9-10-82 arrived at between the management of the bank and all India New Bank of India Employees Federation. The bank has filed the copy of settlement which has been proved by the management witness by means of his affidavit. It is Ext. M 14.

18. Para 16 of the settlement is on the point of suppression of educational qualifications by work staff for

the purposes of securing employment in the bank. According to the terms of the settlement on this point it is clearly stated that only the existing regular full time employees who are in the bank's service, whether permanent or probationer, on the date of signing of this memorandum will be covered by this settlement. The temporary and part time employees are excluded from its scope. From the terms of the settlement it appears that one time benefit was given to such members of award staff who had suppressed/concealed their educational qualification at the time of entering into the service. Thus from the settlement it becomes evident that in view of the request of the Union, the management gave such a concession which would not have otherwise been available to employees who had secured employment by superseding their true educational qualifications. Therefore, this concession is not available to the workman who joined much after the said settlement.

19. From the side of the workman, the fairness of the inquiry and the appointment of the E.O. have been challenged. I think this question does not call for any finding because of the legal position referred to above and findings. From the evidence it appears that the inquiry was not pursued upto its logical conclusion, it was left with the report of the E.O. and thereafter nothing was done on the basis of the report of the inquiry officer, rather before the submission of inquiry report the Regional Manager (Disciplinary Authority) proceeded against the workman independently by issuing him memorandum dated 21-10-86. Copy Ext. M-9, referred to above. The management have filed the copy of inquiry report dated 1-12-86, in which the inquiry officer has held that the workman had passed Delhi Secondary Examination of the Central Board of Secondary Education as a Private candidate in 1978 and that he had concealed his educational qualification for obtaining employment in the bank. The inquiry report has not been admitted by the workman not it has been proved by the management. Where during the course of inquiry proceedings the chargesheeted employees submits the charge otherwise before the disciplinary authority, the question of carrying on the inquiry further does not arise. So even if it be held that inquiry was not conducted fairly and properly, that will not make out a case for the workman.

20. Held that the action of the management of New Bank of India in terminating the service of Sri Ashok Kumar Batra peon cum driver w.e.f. 16-5-87, is justified and alleged.

21. The reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 30 सितम्बर, 1992

का.आ. 2739 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, देना बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-92 को प्राप्त हुआ था।

[संख्या एल-12012/53/91-आईआर(बी-2)]
के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 30th September, 1992

S.O. 2739.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Dena Bank and their workmen, which was received by the Central Government on 29-9-1992.

[No. L-12012/53/91-IR (B-II)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 81/91

In the matter of dispute :

BETWEEN

Shri Hans Raj through
Shri Nem Singh, Assistant General Secretary,
U.P. Bank Employees Union through Dena Bank,
Moradabad-244001.

Versus

Zonal Manager,
Dena Bank,
Praveen House,
28-A, Vidhan Sabha Marg,
Lucknow-226001.

APPEARANCES :

Shri Nem Singh Assistant General Secretary -for the workman.

Shri Harbans Lal Manager (Legal)—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No L-12012/53/91-IR (B-II) dated 25-6-91 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Dena Bank is justified in not regularising Shri Hans Raj in subordinate cadre ? If not, to what relief is the workman entitled ?"

2. The parties settled the dispute and filed a compromise deed Ex. M-1. Statement was recorded to the effect that the matter has been settled and the award may be passed in terms of the settlement.

3. In view of the statement of the parties and compromise deed Ex. M-1 the matter is decided as per Compromise Deed which shall form part of this Award. Parties shall remain bound by the terms of Compromise Deed and are left to bear their own costs.

Dated : 5th August, 1992.

GANPATI SHARMA, Presiding Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

In the matter of :

I. D. No. 81 of 1991

BETWEEN

Shri Hans Raj and Dena Bank

COMPROMISE DEED

Sir,

The parties to the above mentioned reference have compromised, as under :—

- (1) The Management of Dena Bank shall absorb Shri Hans Raj in its regular confirmed service as Cleaner-cum-Sepoy w.e.f. 1-1-1989 and post him to any of the branches in U.P. Region at the point of need at Management's Discretion.
- (2) The Management shall not pay any arrear of Wages to Shri Hans Raj on account of such absorption in its service except under clause (4) hereunder.
- (3) Shri Hans Raj shall be deemed to have already served period of probation and he will be entitled to draw his annual increment from 1-1-1990.
- (4) Shri Hans Raj shall be entitled to claim the arrear of wages on account of such annual increment applicable from 1-1-1990 and he will be further entitled

to draw subsequent annual increment to be effected on 1st of January of each annual year subject to the rules of the Bank.

The necessary award may be passed in terms of compromise deed by this Hon'ble Tribunal.

Dated : 6-7-1992

D. C. PAVAGADHI, Zonal Manager
Dena Bank
NEW DELHI.
NEM SINGH, Asstt. General Secy.
U.P. Employees Union.

नई दिल्ली, 30 सितम्बर, 1992

का.आ. 2740 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, पंजाब एण्ड सिन्ध बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-92 को प्राप्त हुआ था ।

[संख्या एल-12012/42/90-आई आर (बैंक-2)]
के.वी.बी. उन्नी, डैस्क अधिकारी

New Delhi, the 30th September, 1992

S.O. 2740.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Punjab and Sind Bank and their workmen, which was received by the Central Government on 29-9-1992.

[No. L-12012/42/90-IR (B-II)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 82/91

In the matter of dispute :

BETWEEN

Shri Saranjit Singh, Clerk
through Maha Sachiv,
Rashtriya Bank Karamchari Sangathan,
V-202, Ashok Nagar Near Nand Nangri, Mandli Road
Shahdara, Delhi.

Versus

Senior Manager,
Punjab and Sind Bank,
Karol Bang, New Delhi.

APPEARANCES :

Shri R. K. Bansal—for the workman.

None—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/42/90-IR (B-II) dated 25-6-91 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Punjab and Sind Bank in imposing the punishment of stoppage of 3 increments with cumulative effect on Shri Saranjit Singh, Clerk are not paying him full wages for the

period of suspension are justified ? If not to what relief is the workman entitled ?"

2. The Management in this case was proceeded against exparte and the workman was ordered to produce his evidence. But his representative made statement that the workman was out of India and was not in a position to appear before the Court. His evidence was, therefore, closed by his representative.

3. In view of the fact that no evidence has been produced by the workman who is not even in India and his representative has closed his evidence I am of the view that there is no evidence on record to decide this matter. A no dispute award is, therefore, passed in this case leaving the parties to bear their own costs.

Dated : 4th August, 1992.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 1992

का.आ. 2741 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, इंडियन ओवरसीज बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-9-92 को प्राप्त हुआ था ।

[संख्या एल-12012/36/91-आई आर (बैंक-2)]
के.वी.बी. उन्नी, डैस्क अधिकारी

New Delhi, the 30th September, 1992

S.O. 2741.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Indian Overseas Bank and their workmen, which was received by the Central Government on the 28-9-92.

[No. L-12012/36/91-IR (B-II)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :

Sri G. Krishna Rao, B.A., B.L.

Dated the Fifth September Nineteen Hundred and Ninety two
INDUSTRIAL DISPUTE NO. 34 OF 1991

BETWEEN :

Smt. G. Lakshmi, W/o Bhagavan Rao,
H. No. 4-7-920, Komati Basti,
Esamia Bazar, Hyderabad.

Petitioner.

AND

Senior Manager,
Indian Overseas Bank,
Hyderabad Main Branch,
Troop Bazar, Hyderabad.

Respondent.

This case is coming for final hearing before me in the presence of Sri Sudhander Kulkarni and N. Jagan Advocates for the petitioner and Sri C. Sadasiva Reddi Advocate for the Respondent and upon perusing the material papers on record and having stood over for consideration till this day, the Court passed the following :

AWARD

This is a reference made by Government of India Ministry of Labour by its Order No. 1-12012/3691-IR-B.II dated 26-7-1991 for adjudication of the Industrial Dispute between the Management of Indian Overseas Bank, Hyderabad and their workmen setting forth the point for adjudication in the Schedule annexed there to as follows :

"Whether the action of the management of Indian Overseas Bank Hyderabad in terminating the services of Smt. G. Lakshmi, w.e.f. 27-10-89 is justified? If not, to what relief is the workman entitled?"

2. The said reference was registered as I. D. No. 34 of 1991 on the file of this Tribunal. After receiving the notices from this Tribunal both the parties put in their appearance and the petitioner filed the Claim statement on 13-9-1991 and the respondent filed the Counter on 26-10-1991.

3. The averments of the Claim Statement filed by the petitioner read as follows :

The petitioner respectfully submits that she was working as Sweeper in the Respondent Bank continuously for the last six (6) years i.e. 1983 onwards with artificial breaks. The petitioner further submits that consequent upon the resignation of a permanent Sweeper on 27-9-1988, the petitioner was continuously working on Daily Wages basis till the petitioner's services were illegally and abruptly terminated by the Respondent on 27-10-1989. She has worked continuously under the control of the Respondent and put in more than 240 days of service and therefore she became eligible for regular appointment in the Respondent Bank. The petitioner submits that the Respondent has not issued any orders of termination assigning any valid reasons for terminating her services. The services of the petitioner have been terminated orally without any reason or rhyme. The petitioner respectfully submits that the action of the respondent amounts to retrenchment within the meaning of Section 2(oo)(b) of the Industrial Disputes Act, 1947. The petitioner submits that the Respondent has not given any notice before terminating her services, not paid notice pay and retrenchment compensation. The petitioner therefore submits that the action of the Respondent is violation of Sections 25(f), 25(g) and 25(h) of the Industrial Dispute Act, 1947. The petitioner submits that the Respondent has appointed another Smt. G. Laxmi without considering the case of the petitioner as contemplated under Section 25(h) of the Industrial Disputes Act. The Respondent has newly appointed Smt. G. Laxmi who did not work under the control of the Respondent at any time. Therefore the petitioner submits that the action of the Respondent in terminating her services is illegal, unjust and contrary to law and opposed to the principle of Natural Justice. Hence in the interests of the Justice it is prayed that this Hon'ble Tribunal may be pleased to order re-instatement of the petitioner as Sweeper in the Respondent Bank will all consequent benefits such as back wages, seniority and further promotion to the next higher post with costs with effect from initial appointment and pass any such other order or orders as this Hon'ble Tribunal may deem fit and proper.

4. The averments of the Counter filed by the Respondent read as follows :

The claim of the petitioner is not maintainable either in law or on facts. The Respondent denies the averments made in the Claim Statement of the petitioner except those that are specifically admitted by the respondent herein. The respondent submits that prior to 27-9-1988 the petitioner worked as Sweeper now and then in the leave vacancy arising out of the absence of one Ramakka the mother of the petitioner who was working as part time Sweeper. She was being paid daily wages for the actual number of days she worked. That Ramakka, the mother of the petitioner was found to be also working as a full time Sweeper in the Indian Bank Zonal Office under the name Sithamma. When this dual employment was discovered Ramakka resigned from the employment of the Respondent on 27-9-68. Thereafter the petitioner who is the daughter of Ramakka was engaged as a casual labourer on daily wage basis for the days she actually worked with the specific understanding

soon as a permanent incumbent is appointed in accordance with the recruitment procedure followed by the Respondent Bank. No order of appointment was ever given to the petitioner. Therefore the termination of employment of the petitioner as casual labourer on the appointment of a regular employee in accordance with the stipulation under which she was employed as casual labourer cannot amount to retrenchment as defined in Sec. 2(oo) of the Industrial Disputes Act. Hence the refusal by the respondent to employ the petitioner as casual labourer on daily wage basis after the respondent appointed a regular employee for doing the sweeping work in accordance with the recruitment procedure of the Bank is not illegal. It is also submitted that there is no question of issuing any order of termination of the petitioner's services as the petitioner was never appointed and was never given any order of appointment except that she was being employed as casual labourer on daily wages on the specific understanding that she would be so employed until the respondent makes a regular appointment of a Sweeper under its usual recruitment policy of calling for the candidates from the employment exchange or give a compassionate appointment to the dependants of deceased employee of the respondent Bank. The number of days the petitioner worked from 5-12-1988 to 24-10-1989 and the dates of payment of wages for the number of days she worked is shown in the annexure filed herewith. The respondent therefore submits that the action of the respondent Bank in refusing to employ the petitioner as casual labourer on daily wages after another person was regularly employed as a Sweeper is only in accordance with the stipulation of the contract of employment of the petitioner as a casual labourer on daily wages and hence the action does not amount to retrenchment as defined under Section 2(oo) since it squarely falls within the exception mentioned under Sub-clause (bb) of Sec. 2(oo). Hence the question of the action of the respondent being violative of Sec. 25(f), 25(g) or 25(h) does not arise at all. The respondent Bank initially wanted to fill up the post of the Sweeper by calling for the names of the candidates from the employment exchange, and called upon the Employment Exchange to sponsor the names. However the respondent Bank in accordance with its policy had to fill up the post by giving a compassionate appointment to the wife of a deceased employee who died while working in the respondent Bank. The respondent also submits that the reference made to the Industrial Tribunal is not proper and legal. The instant dispute relates to 3rd entry of the second schedule of the Industrial Disputes Act namely "Discharge or dismissal of workmen" which matter falls within the exclusive purview of the jurisdiction of the labour court. Hence it is not a matter to be referred to the Industries Tribunal this being an individual case of discharge or discontinuance of casual employment. The reference is therefore illegal and incompetent and hence the reference may be rejected by this Hon'ble Tribunal.

5. The petitioner examined herself as W.W.1 and petitioner's side was closed. Ex. W1 was marked for the petitioner. M.W.1 was examined on behalf of the Respondent and respondent's side was closed. Ex. M1 was marked for the respondent.

6. The point for adjudication is:

"Whether the action of the management of Indian Overseas Bank Hyderabad in terminating the services of Smt. G. Lakshmi, w.e.f. 27-10-89 is justified? If not, to what relief is the workman entitled?"

7. The case of the Respondent was that the petitioner worked on daily wages in the respondent Bank during the absence of the then Sweeper Ramakka who is no other than the mother of the petitioner and that Ramakka resigned her job on 20-7-1988 and that thereafter the petitioner was engaged as casual labourer on daily wage basis for the days she actually worked with the specific understanding that she would cease to be employed as casual labourer as soon as a new permanent incumbent is appointed in accordance with the recruitment procedure followed by the respondent bank. There is no dispute that the petitioner was dis-engaged from the date on which the new Sweeper was appointed. As seen from the Annexure filed along with the Counter the petitioner was shown to have worked from 5-12-1988 to 24-10-1989 and showing the payments made to her for the periods which she was engaged and the dates

of payment of the wages to her though it is stated in the heading in that Annexure to the fact "No. of days/wages paid to Smt. G. Lakshmi from 24-12-1988 to 20-9-1990". As seen from Ex. M1 marked on behalf of the petitioner it is shown the payments made to the petitioner for the days worked by her from 5-12-1988 to 28-12-1990. So it is clear from Ex. M1 that the petitioner worked till 28-12-1990. Though Ex. M1 and the Annexure filed along with the Counter of the reappointment the payment of wages was shown from 5-12-1988 it is the admitted case of the respondent in the Counter that Ramakka resigned from employment of the respondent on 27-9-1988 and that thereafter the petitioner who is the daughter of Ramakka was engaged as casual labour on daily wage basis for the days actually she worked with the specific understanding that she would cease to be employed as casual labour as soon as the permanent incumbent is appointed in accordance of the recruitment procedure followed by the respondent Bank. So in view of the averments made in the counter of the respondent and contents in Ex. M1 it is clear that the petitioner worked on casual basis as sweeper in the respondent Bank from 27-9-1988 to 28-12-1990 with some breaks in the service. So it is clear from the evidence brought on record that the petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to date of her retrenchment from service. There is no dispute with regard to the non-issuing of one month notice to the petitioner before retrenching her from service and with regard to non-payment of notice pay and to the retrenchment compensation payable to the petitioner under Section 25(F) of the I.D. Act. In view of the facts and circumstances and evidence brought on record it is clear that the removal of the petitioner from services amounts to retrenchment, as defined under Section 2(oo) of the I.D. Act. The provisions under Section 2(oo) (bb) are not helpful to the respondent to say that the termination of services of petitioner was as per the terms of any contract. It is contended by the learned counsel for the respondent that the petitioner was informed at the time of appointing her on daily wages as Sweeper after her mother Ramakka resigned the post, that the petitioner would cease to be employed as casual labour as soon as the permanent Sweeper is appointed. In own contention of the learned counsel of the respondent and in view of the pleading of the respondent in the Counter there was no term (specific period) of service specified in the oral contract as alleged by the respondent, to say that the period of contract for service was expired and therefore it cannot be said that such contract being terminated under the stipulation in that behalf as per the contract, for the respondent to contend that in view of the provisions under Section 2(oo)(bb) the service of the petitioner is expired by efflux of time as per the oral contract, as stated by the respondent. So I am of the opinion that it cannot be said that the Provisions of Section 2(oo)(bb) are applicable to the present case and therefore I am of opinion that the termination of the service of the petitioner in this case clearly amounts to retrenchment as defined under Section 2(oo) of the I.D. Act. The retrenchment of the petitioner without complying with mandatory provisions of Section 25(f) of the I.D. Act is invalid and it gives right to the petitioner for reinstatement and therefore I am of the opinion that the petitioner is entitled for reinstatement with back wages as casual labourer on daily wage basis, as she was working by the time of her retrenchment. Hence I answer the point accordingly.

8. In the result an Award is passed directing the respondent to reinstate the petitioner with full back wages from the date of retrenchment. The Respondent is further directed to pay the back wages to the petitioner within one month from the date of publication of this Award, failing which the petitioner is entitled to realise the back wages with interest at 12 per cent per annum from the date of publication of the Award. It make no order to costs under the facts and circumstances of the case.

Dictated to the Stenographer, transcribed by him and corrected by me, given under my hand and seal of this Tribunal on this 5th day of September, 1992.

G. KRISHNA RAO, Chairman

Appendix of Evidence :

Witnesses examined on behalf of workman/petitioner

1. W.W1 Smt. G. Lakshmi

Witnesses examined on behalf of Management/Respondent

1. M.W1 Smt. P. K. Balamani

Documents marked on behalf of workman/petitioner

Ex. W1 Xerox copy of the minits of discussion held at 3-1-91 Hyderabad with regard to illegal termination of the workman/petitioner.

Documents marked on behalf of the Management/Respondent

Ex. M1 True certified copy of the page No. 149 of Profit and Loss A/c Book for the period from 5-12-88 to 28-12-1990 showing the wages paid to the workman.

नई दिल्ली, 30 सितम्बर, 1992

का.आ. 2742—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. बी. सी. सी. एल. की बासुरिया कोलियरी के प्रबन्धन के संवद्ध नियोजकों और उनके फर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-92 को प्राप्त हुआ था।

[संख्या एल-20012/137/88-डी-3(ए)]

के. वि. भरत उष्णी, डैस्क अधिकारी

New Delhi, the 30th September, 1992

S.O. 2742.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Basuria Colliery of M/s. B.C.C. Ltd. and their workmen, which was received by the Central Government on the 29th September, 1992.

[No. L-20012/137/88-D.III(A)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Sec.10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 156 of 1988

PARTIES :

Employers in relation to the management of Basuria Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—Shri D. K. Verma, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated. the 18th September, 1992

AWARD

By Order No. L-20012/137/88-D.3(A), dated, the 29th November, 1988, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the management of Basuria Colliery of Kusunda Area is justified in dismissing Sri R. G. Pathak, the Office-Superintendent? If not, to what relief he is entitled?"

2. The case of the management of Basuria Colliery of Kusunda Area of M/s. B.C.C. Ltd., as disclosed in the written statement-cum-rejoinder, details apart, is as follows:

The present reference is not maintainable. R. G. Pathak the concerned person was working as Cashier before his promotion to the post of Office Superintendent. He committed several acts of misconduct in the capacity of a cashier and two chargesheets—one dated 7th/8th August, 1985 and another dated 3rd October, 1985 were issued against him. In both the chargesheets he was charged under Certified Standing Orders of the colliery for commission of misconduct of theft, fraud, or dishonesty in connection with company's business or property. He was the Cashier of the Consumer Co-operative Stores in the years 1980-81. He showed to have paid advance from the colliery cash to the Co-operative Stores through vouchers No. 135/6 dated 30th June, 1980 for Rs. 10,000, voucher No. 82/6 dated 22nd June, 1981 for Rs. 12,000 and voucher No. 2/7 dated 1st July, 1981 for Rs. 10,000, but in fact, the only amount through voucher dated 30th June, 1980 was entered in the Co-operative Stores and the balance amount through voucher dated 22nd June, 1981 and 1st July, 1981 were not entered in the register of Co-operative Stores. There is no account of the voucher dated 30th June, 1980 after being entered in the register of the Co-operative Stores. The concerned person misappropriated the amounts mentioned above and the chargesheet dated 7th/8th August, 1985 is based on the above allegations. He showed to have paid Rs. 7000 through voucher No. 158/4 dated 17th April, 1981 to P. K. Chatterjee by forging the signature of P. K. Chatterjee on the voucher and misappropriated the amount. He paid an amount of Rs. 12,000 to S. N. Gupta through voucher No. 11/6 dated 4th June, 1981 towards payment of wages to workers. S. N. Gupta refunded back the amount to the concerned person as the amount could not be disbursed on the same day. But the concerned person did not deposit the amount in June, 1981 and deposited the amount through refund voucher dated 31st March, 1983 when another cashier took charge from him. Thus he misappropriated the amount in June, 1981 and refunded the same on 31st March, 1983 after detection. He paid Rs. 5000 to P. K. Chatterjee towards payment of wages through voucher No. 1/7 dated 1st July, 1982 which was not paid to the workers and the amount remained with Sri Chatterjee. He did not take any step to get the amount refunded and the chargesheet dated 3rd October, 1985 is based on the above allegations. He submitted his reply to the aforesaid chargesheets denying the allegations levelled against him. Sri N. K. Sinha, the then Sr. Personnel Officer of K.O.C.P. was appointed Enquiry Officer to enquire into both the chargesheets separately. Both the departmental enquiries were conducted separately by Sri Sinha on different dates, in the presence of the concerned person who was allowed to engage an Advocate and a Co-worker to assist him in his defence. One C.B.I. officer represented the management in the above departmental enquiry. Both the departmental enquiries were conducted in accordance with principles of natural justice. The concerned workman was given full opportunity to cross-examine the management's witnesses, to give him own statement and to produce his defence witness and documents. The Enquiry Officer held the concerned workman guilty of the misconduct levelled against him in his enquiry report. The competent authorities examined the enquiry proceedings, the enquiry reports and all other relevant papers and took the decision to dismiss him from service. Accordingly, he was dismissed from service by letter No. BC/87/618 dated 7th October, 1987 and No. BC/87/619 dated 7th October, 1987. The dismissal of the concerned person from service with effect from 7th October, 1987 is legal, bonafide and justified.

3. The case of the sponsoring union, Rashtriya Colliery Mazdoor Sangh, espousing the dispute on behalf of the concerned workman, briefly stated, is as follows:

The concerned workman had been working in the colliery from 1965 continuously without any blemish. Unfortunately he was chargesheeted by Chargesheet No. BC/664 dated 7th/8th August, 1985 by the Superintendent of Mines, Basuria colliery on the allegation that 3 ad-hoc payments were shown to have been made as advance payment to Basuriya Colliery Employees Consumers Co-operative Stores while he was working as Cashier in the colliery through voucher No. 135/6 dated 30th June, 1980 for Rs. 10,000, voucher No. 82/6 dated 22nd June, 1981 for Rs. 12,000 and voucher No. 2/7 dated 1st July, 1981 for Rs. 10,000. The said vouchers alleged to have been prepared by him without any written or oral request from Basuriya Colliery Employees Consumers Co-operative Stores and after the said vouchers were passed payments were shown to have been made to J. N. Goom, Salesman of the said Co-operative Stores and the advances were entered in the Advance Register as well as in the Cash Book of the colliery. The said amount of Rs. 32,000 remained unaccounted for in Basuria colliery Employees' Consumers Co-operative Stores. The allegations in the chargesheet also relate to the disbursement and refund of the said amount from Co-operative Stores to the cash. The concerned workman replied to the chargesheet denying the charges. It was impressed that the money have already been realised from the Co-operative Stores by the Colliery and there was no malafide whatsoever. It was also stressed that the concerned workman cannot be charged from any irregularities in maintaining the records of the Co-operative Stores which is altogether a different organisation from the colliery. He was also chargesheeted by Chargesheet No. BC/As/85/Supdt. 876 dated 3rd October, 1985 on the allegation that he made advance of Rs. 7,000 to one P. K. Chatterjee through voucher No. 158/4 dated 17th April, 1981 as advance for making expenditure for some musical programme to be arranged in the colliery. It was further alleged that he also disbursed a sum of Rs. 5,000 to P. K. Chatterjee through voucher No. 1/7 dated 1st July, 1987 for disbursement of wages. It was also alleged that he disbursed a sum of Rs. 12,000 to S. N. Gupta through voucher No. 11/6 dated 4th June, 1981 for payment towards unpaid wages. The case of the management was that the payment was made on fabricated voucher in respect of Rs. 7,000 and other payments were not utilised properly. The concerned workman replied to the chargesheet denying the allegation. His defence was that the money was actually paid and accounted for and there was no defalcation. However, the management was not satisfied with the reply submitted by the concerned workman and directed departmental enquiry to be held by N. K. Sinha, Sr. Personnel Officer of M/s. B.C.C. Ltd. The case of the management was represented by the Officer of C.B.I. on whose allegations the concerned workman was chargesheeted. The C.B.I. had earlier instituted criminal case against the concerned workman in the year 1983 relating to the same allegation but after thorough investigation they submitted final report and the case was dropped. In the departmental enquiry the witnesses were examined on behalf of the management and the concerned workman also submitted his written defence. No record of the Co-operative Store was produced before the Enquiry Officer and none of the witnesses was examined on behalf of the management in support of the charge against the concerned workman. Despite the fact that there was no evidence or material on record against the concerned workman, the Enquiry Officer found him guilty of the charges levelled against him. The finding of the Enquiry Officer is perverse and the Supdt. of Mines dismissed the concerned workman from service with effect from 7th October, 1987 in order to victimise him. It is pertinent to mention that the money have been properly accounted for and there was no loss to the management at any time. In the circumstances, the union has prayed that an award be passed reinstating the concerned workman in service with full back wages.

4. In rejoinder to the written statement of the sponsoring union, the management has denied that the service of the concerned workman was without any blemish. It has been asserted that it is incorrect to suggest that the C.B.I. did not find any material in the chargesheet or that the finding of the Enquiry Officer is perverse or that the concerned workman was dismissed from service in order to victimise him. The management has submitted that after detection of

defalcation of money the concerned workman refunded the money or the money were realised from the concerned persons from their salary. But the commission of misconduct of fraud by using money for his own purpose for 2/3 yrs. and later on refunding the money under compulsive circumstances has been fully established. It is incorrect that the company did not suffer any financial loss.

5. At the instance of the management the fairness and propriety of domestic enquiry was considered as preliminary issue. The chargesheet and other documents produced in the domestic enquiry were marked as Exts. M-1 to M-8 on formal proof being dispensed with.

The learned Advocate for the concerned workman has conceded that the domestic enquiry was held fairly and properly. The materials on record also indicate that the domestic enquiry was held fairly and properly. That being so, it held that the domestic enquiry was held fairly and properly. Thereafter the case was heard on merits.

6. Admittedly, Radha Gobind Pathak, the concerned workman, was working as Cashier of Basuria colliery of Kusunda Area of M/s. B.C.C. Ltd. But the pleadings of the parties have failed to disclose the period during which he was working as Cashier of the said colliery. The written statement-cum-rejoinder of the management discloses that he was working as Cashier before his promotion to the post of Office Superintendent. In his explanation to the chargesheet dated 7th/8th August, 1985 (Ext. M-2) Shri Pathak has disclosed that he worked as cashier of Basuria colliery from July, 1976 to July 1981. In his explanation to the other chargesheet dated 3rd October, 1985 (Ext. M-2/1) he has stated that he left the charge of handling cash with effect from 10th August, 1981. The Enquiry Officer has held that he (concerned workman) was Cashier of Basuria Colliery during 1980-81 and Ex-Officio Treasurer of Basuria Colliery Employees Consumers Co-operative Store. Anyway, the fact remains that two chargesheets—one dated 7th August, 1985 and the other dated 3rd October, 1985 were issued against him for commission of various acts of misconduct involving theft, fraud or dishonesty in connection with company's business or property under Clause 27(2) of the Certified Standing Orders applicable to the employees of Basuria Colliery. The chargesheet dated 7th August, 1985 (Ext. M-1) reads as follows:

"You are charged with having committed the following act of misconducts:—

- (1) That you while functioning as Cashier of Bussoriya Colliery and Ex-Officio Treasurer of Bussoriya Colliery Employees Consumer Co-operative Store during the period 1980 to 1983 failed to maintain honesty in connection with the employers property in the matter of dealing with the funds of the colliery and the Bussoriya Colliery Employees Consumer Co-operative Stores.

The above charge is based on the following allegation:—

- (1) That 3 ad-hoc payments is shown to have been made as advance payment to Bussoriya Colliery Employees Consumers Co-operative vide voucher No. 135/6 dated 30th June, 1980 for Rs. 10,000, voucher No. 82/6 dated 22nd June, 1981 for Rs. 12,000 and voucher No. 2/7 dated 1st July, 1981 for Rs. 10,000. All the 3 vouchers have been prepared by you without any written or oral requests from Bussoriya Colliery Employees Consumers Co-operative and thus basis of preparation of vouchers is not available. After the vouchers were passed the payments are shown to have been made to Shri J. N. Soon, Salesman of said Co-operative Society and the advance are entered in the Advance Register as well as in the Cash Book of the Colliery. The said amount of Rs. 32,000 in all remained un-accounted in the Bussoriya Colliery Employees Consumers Co-operative. It has been found that one amount released through voucher dated 30th June, 1980 for Rs. 10,000 is shown to have been entered in the Cash Book as income but its disposal is not accounted for. There are no entries either of income or expenditure of rest Rs. 22,000 released on 22nd June, 1981 and

1st July, 1981. You also approached in April & May, 1983 to Shri Sukal Deo Mahaseth, Accountant-cum-Cashier of Central Co-operative Store, Bhuli & requested him to accept Rs. 32,000 on account of Bussoriya Colliery Employees Consumers Co-operative Stores to liquidate outstanding dues of Central Co-operative Stores, Bhuli and requested for anti dated receipts showing the receipts in back date to which Sri Mahaseth did not agree. Thereafter, Sri B. Prasad, Manager of Central Cooperative, Bhuli collected the amount from Shri B. N. Shao, present Cashier of the colliery and Ex-Officio Treasurer of Bussoriya Colliery Employees Consumers Co-operative Store in 3 instalments for which on the date receipts were granted and on all 3 instalments for which on the date receipts were granted and on all 3 occasion when the amounts were collected you were present with Shri B. N. Shao. The above facts show that you kept the un-ad-hoc payments in shape of advances to Bussoriya Colliery Employees Consumers Co-operative Store from June, 1980, June 1981 and July 1981 respectively with you and initially tried to pay the amount under anti dated receipts but when the same was refused ultimately the amounts were paid under on the date receipts and thus you mis-appropriated un-accounted amounts for about 2 to 3 years.

The above acts of your amount to misconduct under Sub-Clause 2 of Clause 27 of the Certified Standing Orders applicable to the employees of Bussoriya Colliery which reads as under:

"Theft, fraud or dishonesty in connection with Company's business or property."

You are directed to submit your explanation in writing within 7 days of the receipt of this chargesheet as to why strict disciplinary action should not be taken against you for the above acts of your misconduct. If you fail to submit your explanation within the stipulated time, it would be presumed that you have nothing to say in your defence and that further action in the merit of the case would be taken against you without any further reference."

The reply of the concerned workman dated 23rd August, 1985 to the chargesheet (Ext. M-2) is reproduced hereinbelow:

"With reference to the chargesheet mentioned above I have to reply as under:

1. That, I am shocked and surprised to receive your charge-sheet and to note the contents.
2. The allegations are totally false, baseless, are motivated.
3. That, I have blameless in service for last about 20 years. I worked as Cashier from July, 1976 to July, 1981 and there are no occasion for finding any fault in dealing cash at Basuriya Colliery.
4. That, since July, 1981, I am working as Office-Superintendent at Basuriya Colliery and I have nothing to do with cash of the said colliery.
5. That, so far, I remember that vouchers relating to withdrawal of cash for Basuriya Colliery Employees Consumers Co-operative were being prepared on the oral order of the authority concerned, who were passing the order only after being fully satisfied for payment of the vouchers.
6. That, I have not been supplied with copies of vouchers in question and I am not in position to say after such a long time as to who received the payment. I can not also say whether any entry was made in the Register of Co-operative Society, the day to day account of the Co-operative Store was being maintained of the Co-operative Store by different person.
7. That, it is petinent to mention at this stage that I was never the employee of the Co-operative

Store. Moreover there can not be any charge-sheet for any alleged dereliction of duty relating to Co-operative Store. So far I am concerned.

8. That, so far the maintenance of the cash record of the colliery is concerned, there was nothing wrong and that being the position there can not be any chargesheet against me as cashier.
9. That, so far I gather from the charge-sheet that there was no loss to the management of any amount and that being the position, there can be no charge-sheet against me on mere conjecture and surmises.
10. That, it is totally baseless to say that any amount was paid to the Co-operative Store by Sri B. N. Sao in my presence.
11. That, it is not at all a fact that I asked Sakal Deo Maha Seth and Sri B. Prasad to issue anti-dated receipt to me showing the deposit of cash in Co-operative Store.
12. That, it is very much surprising that has it been a fact that I was any way involved in the matter such long time of virtually more than two years could not have taken to issue charge-sheet against me.
13. That, the charge-sheet had been issued as an after thought at the instance of some interested persons only to victimise me.
14. That, the Charge-sheet is vague and misleading.
15. That, I am innocent and that I have not committed any misconduct.

I, therefore, request you kindly accept the reply and withdraw the chargesheet, so that I may not be dragged in the unnecessary litigation."

The other chargesheet issued against the concerned workman dated 3rd October, 1985 (Ext. M-1/1) reads as follows:

"You are charged with having committed the following act of misconduct :

- (i) That you while posted at functioning as Cashier of Busseriya Colliery during the period 1981 committed acts of fraud and dishonesty in connection with the business or property of the BCCL viz. your employer in the matter relating to release and adjustment of amounts paid as advance vide voucher No. 158/4 dated 17th April, 1981, 1/7 dated 1st July, 1981 and 11/6 dated 4th June, 1981.

The above charge is based on the following allegations :

- (i) That you were posted as Cashier of Busseriya Colliery during 1981 and in that capacity you had disbursed Rs. 7,000 to Sri P. K. Chatterjee vide voucher No. 158/4 dated 17th April, 1981 as advance for making expenditures for some qualwali programme to be arranged in the colliery. You had also disbursed a sum of Rs. 5,000 to said Sri P. K. Chatterjee vide voucher No. 1/7 dated 1st July, 1981 for disbursement of wages and you had also disbursed a sum of Rs. 12,000 to Sri S. N. Gupta vide voucher No. 11/6 dated 4th June, 1981 for payments towards unpaid wages. In the above matters it has been found that a sum of Rs. 7,000 shown to have been paid to Sri P. K. Chatterjee vide voucher No. 158/4 dated 17th April, 1981 is a payment against forged voucher in as much as the signatures of Sri P. K. Chatterjee on the voucher in token of having received the amount is forged and fabricated and Sri P. K. Chatterjee has also denied to have received the said payment. In respect of payment of Rs. 5,000 to Sri P. K. Chatterjee vide voucher No. 1/7 dated 1st July, 1981 it is found that the said advance was not utilised for the purpose for which the amount was released viz. towards payment of extra wages to the workers. As per Finan-

cial Manual Part-II of Coal India Limited of which the BCCL is a subsidiary unit the un-disbursed amount should have been returned to you on the same day. When the amount was not disbursed and the advance made remained un-adjusted you should have pointed out this fact in the Advance Register and also in the Cash Book and should have brought this to the notice of Controlling Officers for recovery of the amount from Sri P. K. Chatterjee. That non-adjustment of the advance could be detected only during reconciliation of the accounts and then only recoveries could be affected from pay of Sri P. K. Chatterjee. Similarly in respect of payment of amount of Rs. 12,000 to Sri S. N. Gupta through voucher No. 11/6 dated 4th June, 1981 it has been found that the amount advanced was not utilised for the purpose for which the advance was given viz. for payment towards unpaid wages and it is claimed by Sri S. N. Gupta that he refunded the un-spent amount on the same day to you which was not entered in the Cash Book by you and the adjustment was not made in the Advance Register. The non-adjustment was never pointed out or brought to the notice of the Controlling Officer by you and the non-adjustment could be detected only during re-conciliation of the accounts and the amount could be recovered and adjusted in lump sum only on 31st March, 1983. It has been found in respect of this voucher that though by 31st March, 1983 you had left the charges of Cashier, still you had prepared the refund voucher and the amount was refunded and paid through the said refund voucher to the Cashier Sri B. N. Shaw, functioning on 31st March, 1983. If the amount would have remained with Sri S. N. Gupta and he would have been depositing the same the refund voucher should have been prepared by him, in his pen and not by you which shows that Sri S. N. Gupta, as claimed by him, has returned the amount to you on 4th June, 1981 and you kept the un-accounted amount with you and deposited the same only on 31st March, 1983 through the refund voucher prepared by you.

The above acts amounts to misconduct as per sub-clause 2 of Clause-27 of the Certified Standing Orders applicable to Busseriya Colliery, which reads as under :—

"Theft, fraud or dishonesty in connection with the Company's business or property."

which renders you liable for strict disciplinary action.

Please explain within 7 days of the receipt of this Memo of chargesheet as to why disciplinary action should not be taken against you for the above misconduct. In case you failed to submit explanation within the stipulated time, it would be presumed that you have nothing to say in your defence and further action on the merit of the case would be taken against you without any further reference."

The reply of the concerned workman dated 19th October, 1985 to this chargesheet (Ext. M-2/1) is re-produced herein below :

"I am shocked and surprised to receive the charge-sheet and to note the contents.

That, the date of alleged occurrence in sometime in the year 1981 and some cases in 1983 i.e. upto 31st March, 1983 as mentioned in the chargesheet.

I have already left the charge of handling cash with effect from 10th August, 1981 and it is highly surprising that I am being asked to explain certain imaginary and false allegations after more than four years after handing over the charge of the cash.

It is also not conceivable as to how a chargesheet can be issued after a period of 3/4 years.

It is not practicable for a normal man to remember cash transaction after such a long time. However, I am prepared to reply in detail and accurately only when the relevant voucher and their relevant entries in the cash book are handed over to me to find out the actual position. I, therefore, request you to please pass order to hand over the relevant voucher and cash book within a reasonable time to time, so that I may get a fair chance to explain the position. If the same is not supplied, it will be presumed that I am being denied deliberately the right of my defence in consonance with the principles of natural justice.

That may however also add that so far I remember I never fabricated or forged any voucher relating to anybody including Shri P. K. Chatterjee and Shri S. N. Gupta and there was no delay on my part in taking account of any amount handed over time by the person concerned.

That this chargesheet has been issued to me for some ulterior purpose at such a belated stage by fabricating and connecting allegations against me.

That I am totally innocent and action is warranted against me I, therefore, humbly request you to please appreciate the position as stated above and drop further action against me.

And for this, I shall be grateful."

Obviously the statements of facts in the charge-sheet dated 7th August, 1985 disclose that the concerned workman was functioning as Cashier of Busseriya Colliery and Ex-Officio Treasurer of Busseriya Colliery Employees Consumer Co-operative Store during the period 1982 to 1983 is not all correct. As per the evidence on record it can at best be concluded that he worked as Cashier of the colliery and Ex-Officio Treasurer of Busseriya Colliery Employees Consumer Co-operative Store upto 10th August, 1981 and thereafter he was elevated to the post of Office Superintendent..

7. It appears from the evidence on record that the concerned workman while working as Cashier of Busseriya Colliery prepared three vouchers No. 135/6 dated 30th June, 1980 for Rs. 10,000, voucher No. 82/6 dated 22nd June, 1981 for Rs. 12,000 and voucher No. 2/7 dated 1st July, 1981 for Rs. 10,000 for advance payment to Busseriya Colliery Employees Consumer Co-operative Store. It has been alleged that these vouchers were prepared by the concerned workman without any written or oral request from the Co-operative Store. Nevertheless the fact remains that these vouchers although prepared by the concerned workman, were checked by H. P. Lala, Accountant of the colliery and signed by R. P. Singh, the then Manager of the colliery. Hence there can not be any odium on the concerned workman for preparation of these vouchers. But the question for consideration is whether these amounts were actually paid to the Co-operative Store. The report of the Enquiry Officer discloses that the management accented the fact that Rs. 10,000 under voucher No. 135/6 dated 30th June, 1980 was credited to the Consumer Co-operative Stores account. It remains to be considered now as to whether the amounts covered by other two vouchers were paid to the Co-operative Store. These vouchers were purported to have been signed by J. N. Goon, Salesman of the Co-operative Store in token of his having accepted payment thereunder obviously for the Co-operative Store. But it has transpired from the solid evidence that these two vouchers were not signed by J. N. Goon. The Enquiry Officer exonerated Sri Goon of the charge levelled against him. Thus, from the evidence on record it is abundantly clear that the concerned workman retained the amount of Rs. 22,000 under the two vouchers aforesaid with him. Although the Co-operative Store subsequently paid the amount to Bhuli Central Co-operative Store in 1983, that does not absolve the concerned workman of the charge levelled against him.

8. Now, I will deal with other charges levelled against the concerned workman. It appears that the concerned workman while working as Cashier of the colliery prepared three vouchers, viz., voucher No. 158/4 dated 17th April, 1981 for Rs. 7,000 as advance for making expenditure on account of cultural programme to be arranged in the colliery to P. K.

Chatterjee, Clerk of the colliery. He also disbursed a sum of Rs. 5,000 to P. K. Chatterjee under voucher No. 1/7 dated 1st July, 1981 for disbursement of wages. He also disbursed a sum of Rs. 12,000 under voucher No. 11/6 dated 4th June, 1981 to S. N. Gupta for payment towards un-paid wages. It has been alleged that the payment under voucher No. 158/4 dated 17th April, 1981 for Rs. 7,000 was shown to have made to P. K. Chatterjee is false and that signature of Sri Chatterjee was forged therein. The evidence on record establishes the fact that the signature of P. K. Chatterjee on the back of the voucher in question as a token of his having received Rs. 7,000 is forged. The payments under other vouchers for disbursement of a sum of Rs. 5,000 to P. K. Chatterjee and Rs. 12,000 to S. N. Gupta are found to be genuine. The management, by Office Order recovered the amount of Rs. 5,000 from P. K. Chatterjee. It has been alleged that S. N. Gupta deposited the amount of Rs. 12,000 to the concerned workman on 4th June, 1981 as unspent amount. But there is no evidence on this score. On the other hand, the evidence on record indicates that the amount was actually deposited by Sri Gupta on 31st March, 1983.

9. Thus, upon consideration of evidences on record, I come to the conclusion that the concerned workman did not account for Rs. 22,000 covered by charge-sheet dated 7th/8th August, 1985 (Ext. M-1) and Rs. 7,000 covered by charge-sheet dated 3rd October, 1985 (Ext. M-1/1). He retained the money with him and has kept the management out of the property and deprived it of the property, however, temporarily.

10. The allegation against him is for theft, fraud or dishonesty in connection with company's business or property. Dishonesty means wrongful gain to one and wrongful loss to another person. Wrongful gain includes wrongful retention and wrongful loss includes being kept out of the property as well as being wrongfully deprived of the property. The concerned workman by his act has wrongfully retained the property to him and wrongfully deprived the management of the property and kept it out of the property. This being the legal position, the charge against the concerned workman has been proved. In the circumstances, his subsequent dismissal from service on the basis of the report of the Enquiry Officer is amply justified.

11. Accordingly, the following award is rendered—the management of Basuria Colliery of Kusunda Area is justified in dismissing R. G. Pathak, Office Superintendent, from service.

In the circumstances of the case, I award no cost.

This is my award.

S. K. MITRA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 1992

का.आ. 2743.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, न्यू बैंक आफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-92 को प्राप्त हुआ था।

[संख्या एल-12012/364/88-डी-2(ए)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 30th September, 1992

S.O. 2743.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal New Delhi, as shown in the Annexure in the industrial dispute between the employers in relation to the management of New Bank of India and their workmen, which was received by the Central Government on the 29th September, 1992.

[No. L-12012 364/88-DE-2(A)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPAJI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

A. D. No. 105/88

In the matter of dispute between :

Shri J. K. Pangasa through
The President, New Bank of India Staff Union,
9-A, Connaught Place, New Delhi.

VERSUS

The General Manager,
New Bank of India,
1, Tolstoy Marg,
New Delhi.

APPEARANCES :

Shri Tara Chand Gupta with Shri P. P. Trikha along with workman.

Shri Jagat Arora for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/364/88-1)-2(A) dated 29-9-88 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of New Bank of India in dismissing from service Shri J. K. Pangasa is justified? If not, to what relief is the workman entitled?"

2. The workman Shri J. K. Pangasa stated in his statement of claim that he was appointed as a Steno-typist in the New Bank of India on 25-7-75 and was posted at the Regional Office of the Bank at New Delhi. In April, 1976 he was transferred to A-Block, Connaught Place and in 1979 to Stationery Department at Naraina, New Delhi. In 1981 he was again transferred to A-Block Connaught Circus. The work and conduct of the workman was never questioned by the Management during his first ten years of service. He had joined the Trade Union movement of the employees of the Bank ever since he joined the bank and was elected as Treasurer of the India Staff Union, Delhi and Vice President of the All India New Bank Staff Association in 1976. From 1981 he had been General Secretary of the All India New Bank Staff Association (Registered). These Unions were affiliated to INTUC and the relations between the Management and Union had always been very cordial and the day to day problems of its members were resolved through mutual discussion. There was another Trade Union in the Bank, affiliated to AIBEA which was enjoying recognition from the management. The representative of the said Union came to be taken up on the Board of Directors of the Bank as Workman Director in September, 1984 and as such he exercised considerable influence on the management of the Bank.

3. The troubles of the Union and its office bearers started as soon as Shri R. C. Suneja joined the bank as Executive Director in September, 1983 and became its chairman and Managing Director in March, 1985. The Chairman of the rival AIBEA Union hatched up a plan to crush the INTUC in the bank headed by the workman as General Secretary as the said union had started bringing to light the growing financial irregularities/malpractices of certain officials and executives at the higher level of Administration. The union also was fast emerging as a strong trade union body of the bank and thus posing a challenge to the dominant position of the recognised AIBEA Union in the Bank. The workman Shri J. K. Pangasa was spearheading the movement to expose the growing financial irregularities/malpractices of the top bank executives and the unholy nexus between them and leaders of the recognised AIBEA Union also became a target of their combined concerted attack. All these officers and the Union became inimical to Shri Pangasa on account of certain letters written by him to the Government. The said letters were annexures W-1 and W-1.

4. In the wake of these letters the services of Shri J. K. Pangasa were suddenly and abruptly terminated on 31-5-85 by a telegraphic order of the bank's Deputy General Manager Personnel. This was followed by a letter of the same date.

The Union moved the Conciliation Machinery under the Industrial Disputes Act for immediate intervention but no settlement was arrived at. Since the termination involved the question of the legality and constitutionality of para 522(1) of the Sastry Award Shri J. K. Pangasa filed a Civil Writ petition before the Hon'ble Supreme Court in July, 1985 challenging his termination. The said writ petition was admitted by the Hon'ble Supreme Court. The management filed affidavit and reply making the allegations against the workman which was denied by the workman in his rejoinder. On 22-7-86 the Hon'ble Supreme Court ordered that the order of termination of service will stand withdrawn and the petitioner would be reinstated with full back wages. However, the Management would be at liberty to proceed in accordance with law. The writ petition was accordingly disposed off.

5. Consequent upon the order of the Hon'ble Supreme Court the workman reported for duty on 29-7-86 to A-Block Connaught Circus Branch but was not allowed to resume duty there and was posted at Azadpur branch vide Order dated 9-7-86 where he joined but reported his protest against the mala fide and vindictive action of the management.

6. Soon thereafter a charge sheet was issued to the workman running into 12 pages and list of 11 charges against him. The said charge sheet was annexure W-1. The charge sheet was vague and lacked material particulars in respect of most of the charges and Shri Pangasa sought clarification on certain points which was not furnished by the said authorities and without waiting for the explanation of the workman the General Manager made an order of holding enquiry against Shri Pangasa and Shri R. K. Sethi, Chief (HR) read Once, New Delhi was appointed as Enquiry Officer for the purpose. Shri Pangasa in his capacity as General Secretary had made complaint to the Government in respect of Shri R. K. Sethi while he was officiating as Regional Manager, Jalandhar and in Uttar Pradesh at Lucknow where he had also worked as Regional Manager. Shri R. K. Sethi was manifestly biased against Shri Pangasa but he continued as Enquiry Officer against him. Shri R. K. Sethi commenced with the enquiry ex parte on 6-2-87 in spite of the fact that Shri Pangasa was out of station in connection with the activities of his association. The workman protested against this but the Enquiry Officer continued with the enquiry. The workman also requested for engaging lawyer for his defence as large number of charges were levelled against him. His request was declined. The bank listed 17 witnesses and large number of documents to be produced in support of the charge sheet though only 10 witnesses were examined. The enquiry was conducted in breach of the rules as well as in utter violation of principles of natural justice. The enquiry concluded on 29-10-87 and the proceedings ran into 550 pages besides large number of documents but was allowed only one days time for arguments of the parties which was fixed for 30-10-87. The workman protested against this act of the Enquiry Officer but his protest was rejected. The workman could not submit his arguments on 30-10-87 and he submitted a letter to the Enquiry Officer alongwith Medical Certificate in support of his sickness. The Enquiry Officer sent a telegram deputed Medical Officer for examination of the workman and the workman's arguments were adjourned to 31-10-87. The workman could not appear on 31-10-87. He received the minutes of the ex-parte proceedings held by the Enquiry Officer on 31-10-87 and a covering letter in which it was stated that the enquiry had been closed on 31-10-87. Though the disciplinary action against the workman vide charge sheet dated 25-8-1986 was initiated by the General Manager (P) and the enquiry was ordered by the said Officer but on conclusion of the enquiry the Deputy General Manager of the Bank Shri M. L. Kalra stepped in as Disciplinary Authority and vide order dated 13-11-87 proposed punishment of dismissal against the workman and asked him to present himself on 16-11-87 to make submission about the proposed punishment. Since the workman was not supplied with the copy of the findings of the enquiry officer he made request for supplying the same. The matter was then adjourned to 23-11-87. The workman was taken ill and, therefore, submitted a letter to the Deputy General Manager on 30-11-87 informing that the bank's approved Doctor had advised him rest and he accordingly requested a date for personal hearing after 15-12-87. The Deputy General Manager arbitrarily declined the request of the workman telegraphically and fixed date of hearing as

3-12-87 and passed the final order confirming the punishment of dismissal. Copy of the said letter was annexure W-19. An appeal was submitted against the final order but the same was dismissed vide order dated 18-4-88 during the pendency of the conciliation proceedings. The order of the management was illegal, unjustified and, therefore, deserve to be set aside. The main ground on which the disciplinary action against the workman was liable to be set aside was that the proceedings were initiated against him on account of the official bias of the authorities, the charges were concocted or sheer after thought with ultimate intention to victimise him. The charge sheet was vague and lack material particulars, list of documents and witnesses were not attached therewith. It was violative of the provisions of clause 19.14 of Bipartite Settlement. The General Manager was greatly prejudiced against the All India New Bank Staff Association and the Enquiry Officer was also prejudiced against him. The workman was not allowed to engage a lawyer in his defence and no proper and reasonable opportunity was given to him. All kinds of irrelevant and leading questions were allowed to the management witnesses, and the Enquiry Officer's report was biased and was made due to personal ill-will against the workman and to get rid of him from the employment.

7. The Management in its reply have not disputed the facts regarding his appointment and transfer of the workman to different places. It was alleged that there were three unions operating and the AIBSA had been enjoying the majority support of the employees for which reason it was recognised and various settlements were entered into with the said Union. The bank was a Government of India Undertaking and under the Provision and control of the Ministry of Finance and Reserve Bank of India. The said authorities have always been acting as Watch Dogs and taking due steps to prevent any irregularities or any malpractices. There had been no financial irregularities or malpractices in collusion with the bank officials and the union officials as alleged by the workman. On the other hand in the various inspections conducted by the Government authorities including the Reserve Bank of India it was observed that the workman and his union were responsible for doing acts of misconduct which hampered the smooth working of the bank. Complaints made by the workman were completely baseless and had not in any way biased the management. The services of the workman were terminated in accordance with the provisions of Para 5.22 of the Sastry Award. The said order was later on withdrawn but there was no intention of crushing the workman or any other employee or members of his Union. The other facts have been stated as correct as per record but the allegations made by the workman in his statement of claim have been vehemently denied. Mr. Sethi conducted the enquiry in accordance with the natural justice and afforded full opportunity to the workman. The representation by the lawyer is not permissible in the Domestic enquiry. The workman himself had been conducting many cases before the Labour Court, Tribunals and also represented other employees in various domestic enquiries. He was himself Trade Unionist and well aware of the procedure of the enquiry. No prejudice was caused to the workman and his legal and technical objections were noteworthy of consideration by the enquiry officer who gave him report after giving him full opportunity. He was allowed to cross-examine the witnesses. But the workman had been bent upon delaying the enquiry on one ground or the other and he sought adjournment for giving arguments on the ground that he was not well. A Penal Doctor was sent to the residential address of the workman but it transpired that he was not available and had gone out. The excuse of the workman regarding sickness was, therefore, incorrect and baseless. The finding of the Enquiry Officer were sent to the workman alongwith proposed punishment order dated 13-11-87. However, he demanded another copy of the Enquiry Report. It was delivered to him through his representative on 16-11-87. Personal hearing was again adjourned to 23-11-87 on which date he again did not appear and the hearing was adjourned to 30-11-87 which also was not attended to by him, and it was fixed for 3-12-87 when the final order was passed.

8. All the grounds on which the workman challenged the enquiry proceedings are without merit and deserve to be rejected. Enquiry conducted by the management was fair and proper and no illegality has been committed nor the conclusions have been arrived due to any bias against the workman.

9. The Management in support of its evidence examined Shri R. K. Jain, MW1. The workman filed his affidavit but did not come into the witness box and both the parties made application jointly that no oral evidence on the issue of enquiry was to be led to them and the matter may be decided on the basis of documents already on record.

10. I have heard representative for the parties and have gone through the record carefully.

11. The Management has examined Shri R. K. Jain, Regional Manager who has stated on oath all the facts concerning the enquiry conducted by Shri R. K. Sethi, Enquiry Officer. The workman himself has not come into the witness box. Lengthy arguments in writing have been filed by the workman and the management regarding fairness and otherwise of the Enquiry but on careful perusal of these documents and the points urged therein, I am of the opinion that there is no such material in the enquiry proceedings that could be the basis of any prejudicial or biased action of the management during the enquiry proceedings. Full opportunity to cross-examine the witnesses have been given and even documents have been given to the workman. For arguments even on excuses which appears to be only delaying tactics adjournments were given. No valid, legal or technical grounds which could prejudice the enquiry, which the workman had been attending so, have been pointed out by the representative for the workman from the record of this case also I have not been able to find out any material ground on the basis of which the enquiry against the workman could be set aside. I, therefore, hold that the enquiry conducted in this case was fair and proper.

FINDING REGARDING QUANTUM OF PUNISHMENT

12. I have heard the representative for the parties regarding the question of relief if any to be awarded to the workman in this case. Representative for the management has urged that charge sheet dated 25-8-86 was served on the workman and enquiry was conducted which has already been held by this Tribunal to be fair and proper. The charges have been established. There was now no ground to interfere in the action of the management under section 11-A of the I.D. Act. As far as the punishment awarded to the workman was not shockingly excessive and it was equal to the gravity of the charges against him. The charges against him were so serious which included abusive language used by the workman against the management and interference in the day to day working, indulgence in manhandling and assaulting senior officers, misbehaviour with R.B.I. Inspectors, levelling of false allegations against the General Manager of the bank creating rowdiness and ratenim over officers of the bank. He also made false complaints to the officers in the Ministry of Finance making wild and baseless allegations.

13. The representative has further urged that no punishment less than dismissal could be inflicted on the workman and his defence that he was trade union leader and has been victimised on account of trade union activities could not hold him at this stage because merely if he seems to be office bearer of the Union it would mean that he could make any misconduct and go unpunished for that. He has referred AIR 1964 SC 486 1978(47), FLR page 98(SC), 1988 (56) FIR 335 (Madhya Pradesh High Court) and 1991(63) FLR 492 Punjab and Haryana High Court. He has thus urged that there was no ground to interfere in the punishment awarded to him and the imposition of penalty of dismissal of service on the workman should stand.

14. The representative for the workman on the other hand has urged that the punishment to be awarded to the workman in case he has been found guilty should always be proportionate to the charge against him. He has urged that the workman was a trade union leader from the very beginning and had been taking active part in the activities of the union. A mere fact that there was some lack of culture and merely he had used some abusive language which was not polished one would not make him liable to the severest punishment of dismissal. In this regard he has referred to 1982-LJL-472 in which it was held as follows:

"An employee, who was the joint Secretary of the Union of Workmen having a clean record of service

of 14 years was found guilty of conduct likely to cause breach of peace threatening an employee within the premises and conduct prejudicial to good order and discipline, was dismissed from service. The employee is said to have committed the misconduct while explaining about the deduction made from his wages for absence from the place of work, and late attendance. The Labour Court upheld the dismissal. The writ petition filed under Art. 227 was dismissed by the High Court.

On appeal under Art. 136, Supreme Court, held, to some extent misconduct is a civil crime which is visited with civil and pecuniary consequences. In order to avoid the charge of vindictiveness, justice equity and fair play demand that punishment must always commensurate with the gravity of the offence charged. In the development of industrial relations norms we have moved far from the days when quantum of punishment was considered a managerial function with the Courts having no power to substitute their own decision in the place of that of the management. More often the Courts found that while the misconduct is proved the punishment was disproportionately heavy. As the situation, then stood Courts remained powerless and had to be passive sufferers incapable of curing the injustice. Parliament stepped in and enacted S. 11-A of the Industrial Disputes Act.

Further held that at present this Court is exercising jurisdiction under Art. 136 over the decision of the Labour Court. Therefore, this Court can examine whether the Labour Court has properly approached the matter for exercising or refusing to exercise its power under Section 11A. Before we can exercise the discretion conferred by S. 11-A the Court has to be satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case.

The Supreme Court while converting the punishment of dismissal into one of withholding of two increments with future effect, held, "that the management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years service he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper and disclosing a threatening posture. When it is said that the language discloses and threatening posture, it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet, improper and abusive language may show lack of culture but merely the use of such language on an occasion unconnected with subsequent positive action and not proceeded by blameworthy conduct cannot permit an extreme penalty of dismissal from service."

The representative has thus urged that token punishment in this case would meet the ends of justice and this Tribunal should come to the rescue of the Trade Union Activities of the workman because sometimes out of rashness or uncontrollable emotions these leaders are likely to go astray but their only purpose is to bring out the injustice being done to other employees or to be at large by the higher acts of the management or by certain individual officers.

A careful perusal of the points urged before me in this case by the representative for the parties lead me to the conclusion that the background of the present disciplinary proceedings and the result should be gone into before taking a final decision about the quantum of punishment. The workman in this case was appointed in the year 1975 became active in the trade union movement in the bank soon after joining and from 1981 had been the General Secretary of the All India Bank Staff Association. His trouble started soon after Mr. R. C. Suneja joined as Executive Director of the bank and one J. K. Sahni Leader of rival recognised Union was appointed as Director on the Board later became banks' Chairman. Services of the workman were abruptly terminated by a telegraphic Order dated 31-5-85 pursuant to the decision of the Board of Directors. The said termination

was supported by and Special Leave Petition before the Hon'ble Supreme Court. The bank disclosed in its counter affidavit the grounds for termination of the workman as acts of his misconduct. The Supreme Court, however, vide its order dated 22-7-86 directed the withdrawal of termination of workman and ordered his reinstatement. The claimant was reinstated on 29-7-86 and the charge sheet on which the present enquiry was conducted was issued to the workman on 25-8-86. Shri R. K. Sethi was Enquiry Officer in that case. Following were the charges as per charge sheet levelled against the workman :

"1. Shri J. K. Pangasa, Steno/Typist, Branch Office, Azadpur Delhi, during his posting at B. O. 9-A Connaught Place, New Delhi, had been creating hinderance and/or obstruction in a very stubborn and obstinate manner in the normal functioning of the branch. He used to have scant regard for the norms and discipline. In fact, he exploited and misused and/or abused his alleged status and position in the union in connivance with others. A few instances of his overt acts, coupled with rowdiness and hooliganism, are detailed below :

1.1. Shri Anil Chadha, then Offg. Chief Manager, in his report dated 16-2-1985, has depicted a very said state of affairs in the functioning of the branch. He has pointed out that :

"restricted practices and intimidation tactics seen to have affected the morale of the employee".

He has further stated that :

"even officers are afraid and preferred to lie low instead of complying with bank's rules and regulations. They watch the irregular happenings helplessly. Compliance of rules and regulations of the Bank has become increasingly difficult."

1.2 Intimidation and restricted practices as pointed out by Shri Anil Chadha, are further confirmed by the events which followed on the joining of Shri C. J. Arora, and Shri P. P. S. Maura, Managers, who joined Branch Office, 9-A, Connaught Place, New Delhi on 15th March, 1985 :

- (i) on their arrival, the lights were put off and branch remained without light the whole day;
- (ii) a glass full of hot tea was hurled upon Shri P. P. S. Manra, which hit his feet;
- (iii) a glass full of hot tea was hurled upon Shri P. P. S. Manra, Manager, by some-one, which spoiled the clothes of Shri Manra;
- (iv) a paper-weight was hurled upon Shri P. P. S. Manra, which hit his feet;
- (v) while Shri Manra was sitting in the hall, though the stair case door, another paper weight was hurled with great force, but fortunately for him, it hit his turban, desheaping it;
- (vi) one rubber stamp was thrown on Shri C. J. Arora, Manager, through the hole in the cabin;
- (vii) a paper weight was thrown at Shri C. J. Arora, Manager.

1.3 The situation of lawlessness and gross indiscipline at Branch Office, 9-A, Connaught Place, New Delhi created by Shri J. K. Pangasa and others, under the garb of their trade union activities, has been confirmed by the Inspectors from the Reserve Bank of India, who visited the branch in the month of February, 1985. It was pointed out by them that a situation of lawlessness and gross indiscipline prevailed at the branch. They have pointed out that "the branch is the centre of activities of INTUC union. Its members have been indulging in undesirable activities and interfering in day to day affairs of the branch. They indulged in putting off lights and crowding manager's cabin, and misutilise telephone facilities." The Reserve Bank of India Officers who were present when the members of

the said union misbehaved with Shri Anil Chadha, have observed as follows :

"the new incumbent Shri Chadha, who was deputed by Head Office to the charge of the Bank from Shri Dhingra, was manhandle and his chamber was smashed and ran-sacked by the members of its staff union."

The activities of Shri J. K. Pangasa and others did not stop here. They misbehaved with the R.B.I. Inspectors also, as is pointed out by R. B. I. as follows :

"Necessary co-operation and facilities were not extended to R. B. I. Inspection team for carrying out the inspection. They were subjected to indecent behaviour/intimidation right from the date of commencement of the inspection."

1.4 From the events referred to above Shri J. K. Pangasa in connivance with others, had been resorting to restricted practices and intimidation tactics in the affairs of the branch in addition to non-performance of work allotted to them under the garb of their trade union activities. He intimidated the staff so as to escape from the duties assigned to him. He indulged in and instigated others to indulge in illegal and undesirable activities by damaging the property of the Bank, misbehaving with the senior officers including physical assault by way of throwing of paper-weights and glass of tea, etc. and misbehaving with the Inspectors of the Reserve Bank of India and thus forcing the state of affairs of the branch to reach the stage where the sincere and honest employees were afraid of confronting the group of Shri J. K. Pangasa and others and watched the irregular happenings helplessly.

1.5 Vide letter dated 2-8-1986, Shri J. K. Pangasa levelled false and baseless allegations against the branch Manager, Shri B. K. Shokeen, and in his vain and baseless attempt in this behalf, he did not even spare the General Manager, Shri S. D. Nayar, Shri J. K. Pangasa, in his above letter, wrote as follows:

"It is also very surprising that the Manager, Shri B. K. Shokeen, is openly threatening me and in load vice, informed me that he has clear instructions of Shri S. K. Nayar, General Manager, to victimise me or harass me on one pretext or the other."

The General Manager, Shri S. K. Nayar, has informed that he has not given any such instructions and Shri B. K. Shokeen has also informed that Shri Pangasa attended the branch only for a day and half since his posting at the branch.

2. On 5-6-1985, Shri J. M. Tandon and Shri S. K. Ahuja, both then Deputy Regional Manager at Regional Office, Delhi, visited Branch Office, 9-A, Connaught Place New Delhi at 12.15 p.m. to look into the problem of electricity in the branch. Shri J. K. Pangasa, though his services had been terminated on 31-5-1985, was unauthorisedly present in the branch and he threatened the said two officers with dire consequences in case they continue visiting Branch Office, 9-A Connaught Place, New Delhi or Branch Office, Pahar Ganj, New Delhi.

3. Shri J. K. Pangasa on 24-4-1986, has filed photocopy of the Bank's records at our L-Block Connaught Circus, New Delhi branch to the Asstt. Labour Commissioner (Central), New Delhi, by managing to removing the said documents from the said branch.

4. Shri J. K. Pangasa with his undue influence coupled with pressure tactics, not D.R.I. loan sanctioned on 23-7-1991 in favour of Shri Ashok Kumar Walla, his brother-in-law, and stood himself as guarantor. Shri Pangasa by his coercive tactics allowed limitation in the said loan to expire and also failed in honour is guarantee. The loan account showed a debit balance of Rs. 743.47 as on 21-8-1986. The

Reserve Bank of India Inspectors, pursuant to inspection conducted by them of Branch Office, 9-A, Connaught Place, New Delhi, have also turnover pointed out as follows :

"Serious irregularities have been noticed in DRI advances, which have been granted to borrowers knows to the staff members of their relatives."

5. Another instance of undue influence coupled with pressure tactics, on the branch manager, by Shri J. K. Pangasa was that the said Shri Ashok Kumar Walla was got employed by Shri J. K. Pangasa as the Godown keeper at the factory premises of M/s. Nags and Cartons, on 9-12-1983, having dealing with the said branch A-Block, Connaught Place, New Delhi.
6. On 22-7-1986, at about 1.15 p.m. Shri J. K. Pangasa accompanying 40-50 persons, went to Head Office, 1, Tolstoy Marg, New Delhi. He shouted and led others to about derogatory and abusive slogans, some of which are given below :-

"KUTTI MANAGEMENT—HAI HAI
SUREJA KUTTA—HAI HAI
SUNEJA MAR GAYA HAI HAI
HAI HAI—HAI HAI"

Some personal abuses were also hurled by the demonstrators is the name of Shri R. C. Suneja, Chairman and Managing Director of the Bank obviously under the lead instigation of Shri J. K. Pangasa.

7. Shri J. K. Pangasa alongwith others, intimidated, abused, threatened, misbehaved with the Inspecting Officer, the Asstt. Central Manager (Audit and Inspection) and Chief (Audit and Inspection) and above all the Chairman and Managing Director of the Bank, as follows ;

7.1 The Chief (Audit and Inspection) deputed Shri D. P. Sharma, Inspecting Officer, to investigate into the DRI advances at Branch Office, 9-A, Connaught Place, New Delhi pursuant to an anonymous complaint received by the Bank.

7.2 Pursuant to the above, Shri D. P. Sharma went to the said branch on 21st May, 1985, and started his work. At about 1.30 p.m. on the same day, Shri D. P. Sharma was called by Shri N. K. Sareen (then Accountant at Branch Office, Pahar Ganj, New Delhi) in the office of the union, namely All India New Bank Staff Association, which is having their office by way of unauthorised induction in the premises of 9-A, Connaught Place, New Delhi branch;

7.3 Shri J. K. Pangasa alongwith Shri N. K. Sareen, questioned Shri D. P. Sharma as to under whose authority Shri D. P. Sharma had started investigation/inspection of D.R.I. advance. Meanwhile, some of their colleagues at the branch also came inside the union office;

7.4 Shri J. K. Pangasa alongwith Shri N. K. Sareen enquired from Shri D. P. Sharma as to why there was re-inspection of the branch when the regular inspection of the branch had already been conducted. Shri Sharma told them that he had come to investigate some D.R.I. cases only pursuant to an anonymous complaint received by the Bank. On hearing this Shri J. K. Pangasa and Shri N. K. Sareen gave a ring to Shri A.N. Khosla, Asstt. General Manager (Audit and Inspection) of Head Office of the Bank, and strongly protested in a vulgar manner for the continuance of the aforesaid inspection/investigation of the branch.

7.5 Shri J. K. Pangasa and Shri N. K. Sareen also asserted that there was no justification in getting the anonymous complaint investigate. They further threatened the said Asstt. General Manager (Audit and Inspection), Shri A. K. Khosla, that they would not allow any inspecting officer to visit the branch for the purpose of investigation. In case, any Inspecting Officer visited he would have to face dire consequences. Both

Sarvashri Pangasa and Sareen hurled abuses on Shri Khosla, as stated hereinafter.

7.6 Thereafter, Shri J. K. Pangasa and Shri N. K. Sareen, also had telephonic talk on the above lines with Shri B. R. Kalra Chief (Audit and Inspection) Head Office, and also hurled abuses on Shri B. R. Kalra, as stated hereinafter.

7.7 During his telephone talk, Shri J. K. Pangasa and Shri N. K. Sareen had with Shri A. K. Khosla, Asstt. General Manager (Audit and Inspection) and Shri B. R. Kalra, Chief (Audit and Inspection), as stated in paras 7.5 and 7.6 they hurled the abuses on them. Some of them are given hereunder :—

"KISS BEHAN KE LORE NEIN
INSPECTOR KO BHEJA HAI
INSPECTOR KO WAPIS NAHIN BULLAYA
TO BAHUT BURA HOGA.
AGAR INSPECTOR NEIN DOBARA BRANCH
MAIN KADAM RAKHA TO HUM
USKI TANGEN (LEGS) TORE DENGHEY.
GMD KO BHEE HUM DEKH LENGEY
WO MADAR CHOD KAUN HOTA HAI".

7.8 In order to avoid physical injury to Shri D. P. Sharma, Inspecting Officer, and in view of the unpleasant situation created by Shri J. K. Pangasa and others, the Asstt. General Manager (Audit and Inspection) called back Shri D. P. Sharma, the Inspecting Officer;

7.9 On that very date i.e. 21-5-1985, at about 1.45 pm, Shri J. K. Pangasa spoke to the Chairman and Managing Director on phone and did not spare even him. On telephone, Shri Pangasa asserted that no one will be allowed to visit the branch 9-A, Connaught Place, New Delhi, for inspection and said :

"ASSI PAHLE WI BANK THE CHAIRMAN THE
SAMNE NANGE HO GAYE SAN AND HUN WI
SARKAN TE NANGE HO KE LARAN GE."

Shri J. K. Pangasa went on the say "IF THE MANGEMENT STILL SEND ANYONE TO 'A' BLOCK BRANCH THEY WILL GO IN OUR DIRECT CONFRONTATION (LARAG)".

8. Shri J. K. Pangasa has written false dafamatory and libellous complaints against the Board, its Directors in their personal names, Chairman and Managing Director in his personal name and management in general. A few instances thereof are given below :

8.1 On 19-3-1985, he wrote a letter direct to the Hon'ble Prime Minister of India, inter-alia lavelling false accusations against the bank management, which is obviously against code of conduct and norms;

8.2. On 20-4-1985, Shri J. K. Pangasa, wrote another letter to the Hon'ble Prime Minister of India, alleging false and wild allegations about the affairs of the Bank : extract thereof is reproduced below :

"Reg : Deplorable and deteriorating condition of New Bank of India in Uttar Pradesh Region.

Sir, We would like to bring to your kind notice about the pathetic state of affairs prevalling in Uttar Pradesh region of New Bank of India. There is nothing worth the name as management in total connivance is being governed by CPI Union".

"This fact about the deteriorating condition has been brought to the notice of Shri Balasubramanian, Ministry of Finance, Director on the Board of New Bank of India."

"It is very unfortunate that Shri N. Balasubramanian has not cared to intervene in the malpractices and mal-functioning of the Bank but on the other hand has always shielded the interest of the C.P.I. union."

8.3 In a letter dated 13-7-1985, to the Hon'ble Minister of State for Finance, Shri J. K. Pangasa, has alleged :

"We would like to inform your goodself about the AIRFA C.P.I. union, which is being openly shielded by the management of New Bank of India and especially by Shri R. C. Suneja, Chairman and Managing Director for their illegal, nefarious and other uncalled activities in the Bank."

8.4 On 19-10-1985, Shri J. K. Pangasa, wrote yet another

letter to the Hon'ble Prime Minister of India alleging therein :

"Sir, we tell that Shri Suneja has given a free licence to the CPI leaders to do their illegal trade union activities."

8.5 On 30-10-1985, Shri Pangasa in his another letter to the Hon'ble Prime Minister of India, has alleged :

"Sir, the administration of New Bank of India has totally been collapsed and the management of New Bank of India is playing in the hands of workmen Director, Shri J. K. Sawhney."

8.6 On 30-11-1985, All India New Bank Staff Association, issued a circular, which is signed by Shri J. K. Pangasa, as the General Secretary, in which it has been written :

"The financial position of bank is very grave and alarming due to inefficiency at all level of administration."

8.7 On 8-5-1986, in letter addressed to our Chairman and Managing, Shri J. K. Pangasa has written as follows :

"Reg. Frauds/misuse of powers by higher authorities of the bank due to which crores and crores of rupees/public money has either become bad or doubtful of recovery.

In connection with the above, please refer to our letter No. AINBSA/GS/85 dated 22-5-1985, vide which we brought to your notice about the increasing rate of fraud and misuse of powers by the higher executives of the Bank. Vide our above noted letter, we also requested you to take necessary steps in the matter or allow us to expose the misdeeds. But till date, we have not heard anything from your end.

We feel the cold attitude of your towards the officers who are directly or indirectly involved in the frauds may affect the huge loss of public money."

A copy of this letter was purported to have been sent to the Hon'ble Prime Minister and Finance Minister of India.

8.8 On 11-7-1986, Shri J. K. Pangasa wrote a letter to Shri G. L. Dogra, Member of Parliament, alleging mal-practices and corruption in New Bank of India. Among others, he alleged as under :

"This time again New Bank of India has granted crores of rupees to a company which is a small fry in the field of exports and cheated a Russian company."

"This case has an analogy to the case of 'JAIN SHUDDH VANASPATI' in which New Bank of India was involved worth Rs. 14.00 crores."

8.9 Shri J. K. Pangasa is well aware that the Bank has stated its case by way of counter affidavit in opposition to Civil Writ Petition no. 8989-90 of 1985 filed by him in the Hon'ble Supreme Court, culminating to Order dated 22-7-1986. The Bank relies upon the same in support of the charges.

9. Shri J. K. Pangasa is well aware that the banking industry in a very sensitive, especially in the credit fabric and as such any adverse publicity can cause not only adverse effect but also incalculable harm to the institution. Shri J. K. Pangasa has had been deliberately and intentionally violating all codes of conduct and norms with the ulterior motive of bringing discredit to the Bank and spoiling its image.

10. The aforesaid acts on the part of Shri J. K. Pangasa are also against public policy and public interest and have been specifically prohibited as per the legislative policy contained in the Banking Regulations Act, read with Banking Companies (Acquisition and transfer of Undertakings) Act, 1980.

11. Even otherwise, Shri J. K. Pangasa has committed breach of his obligations as an employee to the Bank and has had been acting in gross violation of the norms and conduct required to be maintained by the bank employees in a public sector bank."

A very important point regarding these charges was that the workman's services had been terminated on 31-5-85 and he was reinstated on 29-7-86 by the Hon'ble Supreme Court. As such he was not in the employment of the bank from 31-5-85 to 22-7-86 and was then not under the Administration Control of the bank. A perusal of the charges referred about would show that most of the charges were for the period during which he was not in the employment of the bank. Charge No. 2 is dated 5-6-85 Charge No. 3 is dated 24-4-86, Charge

No. 6 is dated 22-7-86, Charge No. 0.3 is dated 12-7-85, Charge No. 8.4 is dated 19-10-85, Charge No. 8.5 is dated 30-10-85, Charge No. 8.6 is dated 30-11-85 Charge No. 8.8 is dated 11-7-86. It means all these charges are of the period when he was not in the employment of the bank and as such not under the disciplinary and administrative control of the bank. Since the enquiry conducted against the workman has been found to be not suffering from any technical difficulty on the basis of which they could be held invalid and on the other hand has been found to be in order as far as the procedure was concerned but this fact that since he was not in the employment of the bank in the charge referred above I think he could not be given any punishment. The other charges that have been proved were not that serious in nature that could make him liable to be to the punishment of dismissal from service particularly when he was only a trade union activist and the management was already prejudiced against him and had already terminated his services on 31-5-85 summarily. Had the Hon'ble Supreme Court not interfered at that stage his termination would have become almost final and He could not have got any relief as no enquiry was conducted against him at that stage nor any opportunity was given to him to explain the circumstances that led him to this situation. In Hindustan Machine Tools Limited, Bangalore and Mohd. Usman and Another the Hon'ble Supreme Court in Civil Appeal No. 199(1) of 1978 dated 21st August, 1983 held as follows :—

"Held: S. 11 A confers power on the Labour Court to evaluate the severity of misconduct and to assess whether punishment imposed by the employer is commensurate with the gravity of the misconduct. This power is specifically conferred on the Labour Court under S. 11A. If the Labour Court after evaluating the gravity of the misconduct held that punishment of termination of service is disproportionately heavy in relation to misconduct and exercised its discretion, this court, in the absence of any important legal principles would not undertake to re-examine the question of adequacy or inadequacy of material for interference by Labour Court."

Since the management was held prejudicial against the workman and had determined to terminate his services I think the punishment awarded to him was disproportionate to the charges proved against him. The other charges as discussed above were not for the period during which the workman was in the employment of the bank. If he had committed any illegal act or had taken the law in his own hands he could have been dealt with according to general law of the land but not by imposing penalty of dismissal when he was already undergoing the dismissal orders passed by the management and the matter was pending in the Supreme Court. I, therefore, while keeping in view all these circumstances am of the opinion that the punishment of imposition of two increments with future effect would meet the ends of justice. I, therefore, order that he be reinstated with full back wages by withholding two increments with future effect with continuity of service. In the circumstances of the case parties are left to bear their own costs.

31st August, 1992.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 1 अक्टूबर, 1992

का.अ. 2744—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार गोवहाटी रिफायनरीज, नूनमती के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, गोवहाटी (आसाम) के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-92 को प्राप्त हुआ था।

[संख्या एल-30012/12/85-डीII (बी)]

के.वी.बी. उण्णी, डेस्क अधिकारी

New Delhi, the 1st October, 1992

S.O. 2744.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Guwahati (Assam) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Guwahati Refinery, Noonmati and their workmen, which was received by the Central Government on the 29th September, 1992.

[No. L-30012/12/85-D.III(B)]

K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE INDUSTRIAL ANNEXURE GUWAHATI, ASSAM
Reference No. 3(c) of 1990

PRESENT :

Shri D. N. Hazarika,
Presiding Officer,
Industrial Tribunal, Guwahati.
In the matter of an Industrial Dispute between :—
The Management of Guwahati Refinery,
Indian Oil Corporation Ltd.,
Noonmati, Guwahati.

AND

Their workman represented by
General Secretary, Guwahati Refinery
Workers Union, Noonmati, Guwahati.

AWARD

This Reference arising out of the Central Government Notification No. L-30012/12/85-D.III(B) dated 27-5-87 relates to the dispute indicated in the Schedule below :

"Whether the action of the management in awarding punishment for one day suspension and consequence thereof to Shri Dharni Dhar Das, Bus Conductor, Guwahati Refinery of Indian Oil Corporation Ltd., Noonmati, Guwahati-20 is justified? If not to what relief the workman is entitled?"

The above mentioned notification initially referred to Central Government Industrial Tribunal, Calcutta but the reference is received from said Tribunal through its letter No. Ref. 88/87/278 dated 9th/12th February, 1990 in pursuance of Government Notification No. L. 30012/12/85-D.III(B) dated 17th/19th February, 1988 under Section 33B of Industrial Disputes Act.

On receipt of the Notification the Reference was registered and notices were issued to the parties to file their written statement. Timely both parties filed their written statements.

On the date of hearing the parties took time to settle the dispute out side the court.

On 18-9-92 both parties present. Seen petition filed by both parties. Management files one letter dated 4-9-92 addressing the workman D. D. Das by Deputy Manager (P&A). Learned Counsel for management P. Deka submitted that except the punishment of 1 day suspension which will remain unchanged workman will get all other benefits admissible under prevailing law.

Learned Counsel for workman Sri Sarmah agreed to the proposal submitted by P. Deka and prayed for an award as per terms of settlement. Perused the letter containing terms of settlement which is marked "X". It appears terms of settlement are reasonable. Therefore award passed as per terms enumerated in letter marked "X" which will form part of the Award.

I give this AWARD on this 18th day of September, 1992 at Guwahati.

D. N. HAZARIKA, Presiding Officer

MARKED "X"

Sd/- D. N. Hazarika,

Presiding Officer,

Industrial Tribunal, Guwahati

INDIAN OIL CORPORATION LIMITED

(Refineries and Pipelines Division)

GUWAHATI REFINERY

No. P/PF/92

Shri D. D. Das,
Operator 'B' (P/F)
Emp. No. 51447.

Dt. 4-9-1992

Thru/ Manager (Fire and Safety)

Please refer to your appeal dated 30-7-92 to General Manager for reconsideration of the punishment of one day suspension on 19-4-85 which was awarded for an act of alleged misconduct. You have also prayed for restoration of benefits for the suspension period pending departmental enquiry.

The General Manager having considered your appeal and all other facts of the case has decided to take a lenient and sympathetic view on this matter. I am, therefore, to convey that your appeal for restoration of monetary and other benefits for the suspension period has been allowed by General Manager subject to the condition that the punishment of one day suspension will remain unchanged and you will file an application before the Industrial Tribunal for withdrawal of reference in the matter in view of this out-of-court-settlement.

The benefits of wage arrears etc. for the suspension period will be in full and final settlement of all your pending claims for the period of suspension which will not be reopened and agitated in future by you.

If the aforesaid decision of the General Manager is acceptable and satisfactory to you a copy of this letter may be signed as token of your acceptance and returned to us.

On receipt of notice regarding withdrawal of reference to be moved by you before the Industrial Tribunal we will take necessary further action.

Sd/- S. JHA,
Dy. Manager (P&A)

नई दिल्ली, 5 अक्टूबर, 1992

का.आ. 2745—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.जी.एम.एल. के.जी. एफ-563120 के प्रबंधक के संघर्ष नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-9-92 को प्राप्त हुआ था।

[संख्या एल-43012/10/89-आई आर(मि.)]

के.वी.बी. उन्नी, डैस्क अधिकारी

New Delhi, the 5th October, 1992

S.O. 2745.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B.G.M.L. K.G.F-563120 and their workmen, which was received by the Central Government on the 28-9-92.

[No. L-43012/10/89-IR(MISC)]

K. V. B. UNNI, Desk Officer

2512 GH/92—5

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT, BANGALORE

Dated this 15th day of September, 1992

PRESENT :

Sri M. B. Vishwanath, B.Sc., B.L.
Presiding Officer

CENTRAL REFERENCE NO. 66/89

I party
J. Antonyswamy
35, Corporation Town,
Robertson Pet P.O.
K.G.F. 563122.

V/s

II party
The managing Director,
B.G.M.L.
Oorgaum P.O.
K.G.F. 563120

AWARD

In this reference made by the Hon'ble Central Government by its order No. L-43012/10/89-IR (Misc.) Dt. 5th Sept. 1989, the point for adjudication as per schedule is :

"Whether the action of the management of B.G.M.L., K.G.F. in retiring Sri J. Anthony Swamy, Head Section Clerk from service with effect from 01-01-89 is justified. If not, what relief is Sri Anthoneswamy entitled to?"

2. The case of the I party workman as per claim statement is:—

The I party joined the services of the II party on 1-7-52. Though the I party workman declared then that his date of birth was 24-7-31, it has been wrongly entered by the II party as 1-7-28. The I party workman is entitled to continue in service till 21-7-91 on the basis of basis of his correct date of birth 24-7-31. The II party issued a notice dated 1-1-88 to the I party stating that the I party would be attaining the age of 60 years (superannuation) on 1-7-88 and that he would be retired from service on 1-7-88. The I party submitted a representation to II party that he (I party) would reach superannuations on 24-7-91 and so he should be permitted to continue in service. On this representation, the II party by its order stated that the I party workman would be continued up to 31-12-83 and that the earlier notice dt. 1-1-88 stood cancelled. The II party issued notice dt. 30-6-88 stating that the I party would be attaining the age of superannuation, 60 years, on 1-1-89 and on 1-1-89 he would be retired from service. The I party again gave a representation stating that he would be superannuated only on 24-7-1991 since his date of birth was 24-7-31. The II party has not replied to his representation. The I party filed a writ petition and obtained an interim order of stay on the notice issued to I party that he would be retired on 1-1-89. On 31-1-89 the Hon'ble High Court was pleased to dispose of the writ petition directing the I party to agitate the matter before the appropriate authority. The II party issued another notice dt. 10-2-89 to the I party and relieved him from his post on 13-2-89. The notice dt. 10-2-89 issued by the II party is illegal. The action of the II party relieving the I party on 13-2-89 is illegal. The I party is entitled to continue in service till 24-7-91.

3. In the counter statement it is contended by the II party it is true that the I party joined the service of the II party on 1-7-52. It is false that as incorrect entry regarding date of birth was made at the time of his joining the service, though he gave his correct date of birth as 24-7-31. I party himself has declared his age as 24 years at the time of joining service. The II party gave opportunities to the employees through notifications in 1963 and 1964 to get their dates of birth corrected, but the I party workman has not availed himself of this opportunity. The I party is not entitled to continue till 24-7-91. The I party was rightly retired on 31-12-88 (sic.) The II party is fully justified in retiring I party w.e.f. 1-1-89. The reference has to be rejected.

4. It is noted in the order sheet dt. 27-8-90 that separate issues need not be framed because the point in dispute is covered by schedule to the reference.

5. On behalf of the II party M.W.1 S. Stephen. Personal Manager of II party and M.W.2 Reddy Asst. Personal Manager have been examined. On behalf of the I party he has got himself examined and closed his case.

6. Service book Ex. M.4 shows that the date of birth of the I party workman has been entered as 1-7-28. Now the I party workman has come with a clear case and whether his date of birth is 24-7-1931.

7. Now the point for consideration is whether the I party workman has come with a clear case and whether his date of birth is 24-7-31.

8. It is seen from the order sheet dt. 1-10-91 that the I party has produced his Baptism Certificate and it is marked by consent as Ex. W. 12. While the I party claims that his date of birth is 24-7-31, his own document the Baptism Certificate Ex. W.12 mentions his date of birth as 24-4-31. This discrepancy sheds lurid light on the case of the I party.

9. Ex. W.2 is the certificate of birth produced by the I party workman. This has been issued by the City Municipal Council of Robertson pet, K.C.F. Ex. W.2 shows that the date of birth of one male child born to Joe Cicila is 24-7-31. There is one aspect in Ext. W.2 which militates against the I party workman. The date of issue of Ex. W.2 has not been mentioned though there is a column Date..... So no weight can be attached to Ex. W.2

10. Ex. W.3 is the transfer certificate relating to I party workman. Ex. W.3 shows that the I party workman was studying in primary 4th standard and his date of birth has been mentioned as 24-7-31 in letters. I have come to the conclusion that Ex. W.2 cannot be believed. I have adverted to the discrepancy between the case of I party and his own document Ex. W.12 Baptism Certificate. When the I party had obtained Ex. W.3 in 1955, he could have produced before the II party when the notifications Exs. M.6 and 7 were issued by the II party in 1963 and 1964 respectively calling upon the employees to get their date of birth corrected if there was a mistake. Ext. W.1 Dt. 12-2-64 is the carbon copy of the representation. According to the I party he had given the representation to the II party in 1964. But it was not considered. Ex. W.1 cannot be believed because I party has not produced any endorsement to show that he had given the original of Ex. W.1 to II party. For these reasons I am not prepared to rely on Ex. W.3 also. The documents produced by the I party workman to prove his date of birth are highly doubtful documents. Against the background of Ex. W.12, it can't be ruled out that the I party workman has wangled Ext. W.2 and 3.

11. The law on the point has been laid down by our Hon'ble High Court in I.R. 1992 Karnataka page 554 (R. Kunuraj v/s. B.G.M.L.). Though the law is laid in an injunction suit, it is applicable to the facts of the present reference also. His Lordship the Hon'ble Mr. Justice R. V. Vasantha Kumar has been pleased to hold that the present claim of the plaintiff based on Educational certificate, birth extract seems very inconsequential against the sanctity and authority of the time honoured entries in the service book which the plaintiff himself has been accepting for more than 30 years. His Lordship has been pleased to make it clear that there should be overwhelming reasons to establish that the entries in the service records and other documents produced by the II party have been made under dubious or erroneous circumstances before unholding the claim of a party to get his date of birth altered. It is clear from the material on record that the I party has stert over his alleged claim of alteration of date of birth for over 35 years.

12. For the aforesaid reasons I am of opinion that the I party workman has not established that his date of birth was 24-7-31.

13. All other documents and evidence not referred by me are not relevant. In any case they do not alter my conclusions reached above.

ORDER

The reference is rejected. Award passed accordingly. Submit to Government.

(Dictated to Stenographer, typed by him, corrected and signed by me)

M. B. VISHWANATH, Presiding Officer
15-9-92.

नई दिल्ली, 28 सितम्बर, 1992

का.आ. 2746—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में, विजय ग्रेनाइट कुन्नाम, वानुर तालुक के प्रबन्ध-तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, तमिलनाडु के पंचपट को प्रमाणित करती है जो केन्द्रीय सरकार को 28-9-92 को प्राप्त हुआ था।

[संख्या एल-29012/76/91-आई आर (मिस.)]

बी. एच. डेविड, डेस्क अधिकारी

New Delhi, the 28th September, 1992

S.O. 2746.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Tamilnadu as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Vijay Granites, Kunnam, Vannur Taluk and their workmen, which was received by the Central Government on the 28-9-92.

[No. L-29012/76/91-IR(MISC)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU, MADRAS

Friday, the 11th day of September, 1992

PRESENT :

Thiru M. Gopalaswamy, B.Sc. B.L., Industrial Tribunal.
Industrial Dispute No. 46 of 1992

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the management of Vijay Granites, Kunnam, Vannur Taluk.)

BETWEEN

Thiru K. Dhandapani,
S/o Kunnusamy Gounder,
Colony Street,
Tindivanam Taluk,
South Arcot District,
Pin-604001.

AND

The Manager,
M/s. Vijay Granites.
Kunnam,
Perumbakkam Post,
Vannur Taluk,
Pin-604304.

REFERENCE :

Order No. L-29012/76/91-IR (Misc.) dated 5-5-1992 of the Ministry of Labour, Government of India.

This dispute coming on this day for final disposal in the presence of Thiru D. Hariparanthaman, Advocate appearing for the workman upon perusing the reference and other connected papers on record and the parties having filed a settle-

ment and recording the same, this Tribunal passed the following :

AWARD

This dispute between the workman and the management of Vijay Granites, Kunnam, Vannur Taluk arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-29012/76/91-IR (Misc.), dated 5-5-1992 of the Ministry of Labour, for adjudication of the following issue :

"Whether the action of management of M/s. Vijay Granites in terminating the services of Shri K. Thandapani, Compressor Operator is justified? If not to what relief is he entitled to?"

(2) Parties were served with summons.

(3) After several adjournments when the dispute was called today, the counsel for the workman filed a settlement dated 9-9-1992 entered into between parties praying to pass an award in terms of settlement. It is recorded.

(4) An award is passed in terms of the settlement dated 9-9-1992.

Dated, this 11th day of September, 1992.

M. GOPALASWAMY, Industrial Tribunal

ANNEXURE

The Government of India, Ministry of Labour, New Delhi had referred the following Industrial Disputes to the Industrial Tribunal, Madras under clause D(i)(2-a) of Section 10 of the I. D. Act, 1947.

"Whether the action of the management of M/s. Vijay Granite in terminating the services of Shri K. Thandapani, Compressor-Operator is justified? If not to what relief is he entitled to?"

While the dispute I. D. No. 46/92 is pending before the Industrial Tribunal, Madras, the parties arrived at a settlement on the following terms.

1. Shri K. Thandapani has to be paid by the management an amount of 8,000 rupees as full and final settlement of all his claim arising out of terminating of his services by M/s. Vijay Granite Private Limited, Kunnam, Perumbakkam Post, Vannur Taluk, South Arcot District, Tamilnadu.

2. The amount has been paid today, on 9-9-92 to Shri K. Thandapani by demand draft dated 4-9-92 in No. 338788 drawn in favour of K. Thandapani in UCO Bank, Madras Main Branch.

3. This agreement would be submitted before the Hon'ble Industrial Tribunal with the prayer that an award may be passed in terms of this settlement.

Sd/-
(K. THANDAPANI)
9-9-1992

Sd/-
(K. SHANMUGAVEL)
9-9-1992

Witness : Industrial Relations
Sd- Advisor
(D. Hariparanthaman) for M/s. Vijay Granites (P)
Advocate, Madras, Ltd., Kunnam, Perumbakkam
Dated : 9-9-1992. (Post), Vannur Taluk,
South Arcot District,
Tamilnadu.

M. GOPALASWAMY, Industrial Tribunal

नई दिल्ली, 28 सितम्बर, 1992

का. प्र. 2747.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय

सरकार कलकत्ता पोर्ट ट्रस्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कलकत्ता के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 28-9-92 को प्राप्त हुआ था।

[सं. एल.-32012/7/88-डी III (बी)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th September, 1992

S.O. 2747.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Calcutta Port Trust and their workmen, which was received by the Central Government on the 28-9-92.

[No. L-32012/7/88-D III (B)]

B. M. DAVID, Desk Officer.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 2 of 1989

PARTIES :

Employers in relation to the management of Calcutta Port Trust, Calcutta.

AND

Their Workmen

PRESENT :

Mr. Justice Manash Nath Roy.—Presiding Officer.

APPEARANCE :

On behalf of employers

Mr. G. Mukherjee, Personnel Officer.

On behalf of workmen

Mr. A. Banerjee, General Secretary of the Union.

State : West Bengal.

Industry : Port.

AWARD

The Calcutta Port Trust (hereinafter referred to as C.P.T.), imposed reduction of pay by one stage with cumulative effect, on one Sri Ganga Dayal Haluai, Yard Porter No. 1202 referred for adjudication by order No. L-32012/7/88-D.III(B) dated 26-12-88 (hereinafter referred to as the said employee), as a measure of punishment, after a Disciplinary proceedings under the Calcutta Port Commissioner's Employees' (Discipline & Appeal) Rules, 1964 (hereinafter referred to as the 1964 Rules), on the basis of a charge of misconduct to the effect, that he, while functioning as Yard Porter, behaved in a most objectionable manner with Sri D. N. Gupta, Sr. AST[CCD], when he called at his office at about 11.55 Hrs. on June 6, 1981, defying all norms of discipline and threatening

the said Sri Gupta with dire consequences, if he failed to concede to his demands. In fact, it has been alleged that the said employee, used such objectionable words viz "Badmashi", "Badmash Admi" and "Chor", against the said Sri Gupta and also threatened to "Guaero" him, in his office.

2. It was the case of the said employee that he was a popular Trade Union Leader and used to represent the working people, in the Railway Department of the C.P.T. It was also his case that those employees had a long standing grievance/dispute pending, over a charter of demand, amongst others, in respect of supply of uniforms, both for summer and winter, in time, supply of Goblets, for the purpose of preserving drinking water and for supply of pad-locks, for locking the gates.

3. It was his further case that when he went along with other colleagues, to the said Shri Gupta, to discuss the above issues and made necessary representations to the said Sri Gupta, he, with predetermined mind, misbehaved and could not really satisfy them and involved himself in exchange of heated words and that too, for satisfying his grudge and for that, he cooked up false and baseless allegations, with the help of some of his colleagues and subordinates and ultimately, he got the Charge Sheet dated August 19, 1981 as included in Exhibit M-1, issued on him.

4. The said employee has alleged that over the charge sheet, an enquiry was held by the Assistant Superintendent (Permit) of the C.P.T. But, it was his allegation that the said Enquiry Officer, was biased and prejudiced and as such, even though, he submitted a list of defence witnesses, in defence of his case, yet, they were not summoned, which was also required under the Department Enquiry (Enforcement of Attendance of Witness and Production of Document) Act, 1972 and completed the Enquiry and has thus, denied him proper opportunities to defend his case and such, completion of the Enquiry, was done in his absence.

5. The said employee has then alleged that thus, the Enquiry was held and completed in violation of principles of natural justice and fundamentals of fair play and ultimately, the final order of punishment, as indicated earlier, was passed on September 5, 1983 and against that, he preferred an Appeal to the Chairman of the C.P.T. on January 31, 1984, which, on consideration by the Deputy Chairman of the C.P.T., was rejected on July 10, 1984 and against the said order, he again preferred another Appeal to the Chairman of the C.P.T., which on being rejected on November 5, 1985, he preferred further Appeal to the Hon'ble Minister-in-Charge of the Ministry of Surface Transport and to that, he has not received any reply.

6. Thereafter, the said employee has stated, to have raised this dispute through the Calcutta Port and Dock Industrial Workmen Union (hereinafter referred to as the said Union) which in fact represented his case here.

7. It has been alleged that the said employee has been made to suffer, for cooked up, concocted, false and manufactured charge and the action taken against him, was not fair and was against all principles of natural justice and in fact, he was denied reasonable

opportunities, to defend his case or to prove his innocence. The Enquiry, was also claimed by him, to have been held against mandatory provisions of the Enquiry Act as indicated earlier. He also claimed that his Appeals were not duly disposed of by the appropriate authorities. He further claimed that the action as taken, was only to victimise him.

8. It was the case of the C.P.T. that the said employee was the Yard Porter and on June 6, 1981, he was detailed for duty at the Sonai Gate from 6.30 Hrs. to 14.30 Hrs., but, he left the place of the work, without any authority at about 11.55 A.M. and rushed into the room of said Sri Gupta and abused him by using objectionable language and words as indicated earlier apart from threatening him with dire consequences and forcibly occupied the chair in the room of the said Sri Gupta and also shouted in very objectionable manner, defying all norms of discipline. As such, it has been stated that the said Sri Gupta made a report, which is part of Ext. M-1, on the basis whereof, Charge sheet as indicated earlier, was framed and the same was accompanied by the allegations, as mentioned in paragraph 7 of the Written Statement. If the fact of occupying a chair by a subordinate in the presence of his superior and in the manner as indicated is correct, that in my view cannot be allowed, as that would be the end of all official norms, discipline and propriety.

9. It was also the case of the C.P.T. that the said employee was also asked to submit his defence, in reply to the charge sheet, but he did not file such reply, whereupon, Sri B. N. Putatunda the then Assistant Superintendent was appointed as the Enquiry Officer and such enquiry was held, where the said employee defended his case with the help of a helper. It has been stated that the said employee, was given all reasonable opportunities to defend his case and was asked to produce defence witnesses, if any, but such witnesses were not produced. It has further been alleged that the concerned enquiry, had to be adjourned from time to time, on the request of the said employee, which was held in accordance with the provisions of 1964 Rules and with all opportunities to the said employee, to defend his case and as such, there was no violation of any principles of natural justice, as alleged.

10. The C.P.T. has stated that on February 4, 1983, the Enquiry Officer submitted his report and the Traffic Manager, being the Disciplinary Authority under the above Rules and in this case, proposed to inflict such punishment, on the said employee, as quoted earlier and on such, he was called upon by him, to show cause, why the proposed punishment should not be inflicted, to which only, the said employee replied by his letter dated May 23, 1983 and the Traffic Manager, not being satisfied with such reply, passed an order on September 5, 1983, inflicting the punishment as indicated earlier. It was the case of the C.P.T. that, on that, the said employee preferred an appeal to the Appellate Authority on January 31, 1984 and the Deputy Chairman, being the Appellate Authority, considered that Appeal and rejected the same. It appears, that the said employee, then wrote to the Chairman of the C.P.T. and as such, has claimed to have preferred another appeal,

but since under the Rules of the C.P.T. as indicated earlier, once an appeal is considered by the Appellate Authority, no further appeal would lie, the application of the said employee was considered by the Chairman and he observed that no further appeal lay. It has also been stated by the C.P.T. that on the basis of the Charge Sheet, the Enquiry against the said employee, was duly held, in terms of the 1964 Rules and he was asked to submit his Written Statement of defence and also to indicate, whether he intended to be heard in person, apart from directing him, to furnish the names of his witnesses, if any, whom he would wish to call, in support of his defence and also to furnish a list of documents, which he wished to produce in support of his case. But, no statement in defence was filed and so also, the list of documents and the list of witnesses are in Annexure 'B' to his written statement was also not made available in time.

11. It was the case of the C.P.T. on facts that initially the enquiry was held on January 12, 1982, in the presence of the said employee and also in the presence of his defence helper and such enquiry continued upto April 26, 1982 and on these days, the said employee deposed before the Enquiry Officer in his defence and thereafter, the next date of enquiry was fixed on July 15, 1982, when, the said employee did not attend, but his defence helper was present and then, the enquiry proceeding was fixed on several dates from September 10, 1982 to January 1, 1983, but on each of these days, the employee prayed for adjournments on various grounds, which were allowed. The enquiry was ofcourse, thereafter, fixed on February 3, 1983, when the said employee, did not attend, although he was duly intimated and as such the Enquiry Officer had no other alternative, but to fix and conduct the enquiry on February 3, 1983, *ex parte* and than on February 4, 1983, he filed his report, finding the said employee guilty of the charges as levelled against him. The Traffic Manager, who was the Disciplinary Authority, concurred with such findings and issued a second show cause notice, proposing the punishment as indicated earlier. To this show cause only, the said employee filed his reply, which was considered by the Traffic Manager and since, he was not satisfied with the explanation, the order imposing punishment, was passed. It has been stated, in holding, conducting and concluding the enquiry, all reasonable opportunities to represent, was given to the said employee and there was no violation of the principles of natural justice, as claimed.

12. Thereafter, the C.P.T. has dealt with the statements as incorporated in the Written Statement of the said employee and denied them in *seriatim* on repeating their statements of defence and facts as indicated earlier.

13. There was a rejoinder dated January 15, 1990, filed on behalf of the said employee, wherein the material allegations and facts as contained in the C.P.T.'s Written Statement, have been denied.

14. The Enquiry Officer deposed as MW-1 and apart from proving that he was duly appointed as such, he narrated the incidents which were the basis of the charge sheet against the said employee. He

was specific that the charge of indisciplined behaviour and other charges of using abusive words to the said Sri Gupta, have been proved and it was also brought in evidence that the enquiry proceeding continued from 1981 to 1983 and in between, there were several sittings, when depositions were recorded and in all the sittings, excepting the last one, the said employee appeared and participated, along with his defence helper. From the evidence of this witness, it will appear that all steps were taken to duly inform and intimate the dates of enquiry to the said employee and it was alleged that due and all reasonable opportunities, were given to him, but he failed to avail them.

15. MW-2 was the Deputy Railway Manager of the C.P.T. and it was his evidence that he heard, in 1981, there was a disciplinary proceeding against the said employee and although he has gone through such proceedings, but he had not dealt with them. It was his evidence that charge sheet was issued by the Traffic Manager, B. A. Tikku, on the basis of the complaint against the said employee, by the said Sri Gupta. He has proved the complaint and so also the signature of the said Sri Gupta. He has further stated that there was statement of one Sri Lala Maharaj and he made such statement as he was present in the room of the said Sri Gupta, when the incident was alleged to have happened or immediately thereafter. By that incident, he meant that the said employee raised certain demands in the room of the said Sri Gupta. The MW-2 has also produced the statements of one Indu Bhusan Dutt, who was called from outside the room of the said Sri Gupta and witnessed the incident, apart from stating that one Subodh Kumar Chakraborty, who entered the room after hearing the altercations, filed a statement on June 27, 1981 and the other documents of the same date were filed by one Shyama Pada Chatterjee, who also heard the altercations from another room and on hearing such, he made a statement. He has also proved the punishment show cause notice and so also, the final order, passed against the same employee. It was his evidence that along with the second show cause notice, the summary of the findings of the Enquiry Officer were annexed and the employee, about whom he has spoken, had worked under him.

16. WW-1 is the said employee. It was his case that in 1981, he was a member of the Calcutta Port Trust Workmen Union and was also their Vice President and now, he is a member of the Calcutta Dock Port Industrial Workmen Union and he used to negotiate with the Management, regarding the service conditions of the workmen. He has said that there were perhaps 3 demands, oral representations on these demands were made to the authorities, but, they were of no avail or any assistance. It was his evidence that the said Sri Gupta, was the Officer of their Yard and on June 5, 1981, he came to their office for making a telephone call and at that time also, he made oral representations on the pending demands and on his asking, he went to meet the said Sri Gupta on the following day, being accompanied by Sri Suruth Prasad and the discussions with said Sri Gupta were very cordial. He denied to have used any abusive language against the said Sri Gupta. He agreed that he participated in the enquiry as held

against him and by Ext. W-2, which was handed to the helper of the workman, under the instructions of the Enquiry Officer, he filed the list of defence witnesses, but the same was refused to be accepted. It was his specific case that these witnesses as mentioned in Ext. W-2, were not called in the enquiry and when he was having discussions with the said Sri Gupta, no other person was present. It was his case that the Enquiry Officer did not consider his case duly and the evidence as was asked to be adduced, was not appropriately done and considered. He was of course not sure, when the enquiry was concluded. He has said to be knowing Sri Lala Maharaj and said his relationship with him was good. He knew Indu Bhusan Dutt, as also Subodh Kumar Chakraborty and Bimalendu Purkait and has stated initially that he knew one person by the name of Shyama Prasad Chatterjee and then said, he was not known to him and with all the persons as mentioned above, excepting the Shyama Prasad Chatterjee, his relationships were cordial. Here, it should be noted and remembered that the said employee himself has stated that Shyama Prasad Chatterjee was not known to him, yet he has said that excepting him, with others, his relationship was very cordial. Such statements appeared to have been very difficult to believe as a proper and bonafide statement. He has denied to have received Ext. M-1 i.e. the letter dated June 6, 1981, wherein the charge against him has been indicated and the same also contained the report of said Sri Gupta. It should be noted that the said Sri Gupta, in his report has indicated abusive words, language and threatening attitude of the said employee and has also stated that he was in the habit of indulging in such tactics and for that, he recommended that strong disciplinary action should be taken against him. It was the case of the said employee that when he went to meet the said Sri Gupta, he was working and it was not true that at that time, he was giving dictation. Giving dictations to my mind by an officer, should he deemed that he was working. It was his further evidence that when he entered the room, the said Sri Gupta started talking to him and when the discussions were on, Sri Lala Maharaj came there and before he entered, the discussion were over. It was his further case that before meeting the said Sri Gupta, he met Indu Bhusan Dutt, who was the Bara Babu and he met him, as he was directed as such. He has further denied that on the dates as mentioned earlier, he did not go to the said Sri Gupta and only, went to meet him thereafter. It was his further case that the Chambers of Sarbasree Indu Bhusan Dutta, Subodh Kumar Chakraborty and Bimalendu Purkait were adjacent to the chamber of the said Sri Gupta and it was not true that Sri Lala Maharaj came in, when the abusive words as alleged to have been made by him, were stated. He denied to have talked at the top of his voice or use such abusive language, as mentioned earlier, against the said Sri Gupta. He agreed to have nominated one Raghu Nath Singh, as his defence helper, who attended the enquiry along with him twice and not thereafter. It was his allegation that after those days, he went to attend the enquiry, but the officer was not available and when he attended on subsequent days, he was not accompanied by Raghu Nath Singh and he was accompanied by others. He has not, of course, indicated,

who were those others. He has denied that the enquiry could not be held on the subsequent days, as he did not participate.

17. Mr. Banerjee, appearing for the said employee indicated that the charge sheet was really issued on the basis of the complaint Ext. M-1, filed by the said Sri Gupta, which again was not sound and the basis of the evidence as appearing in the Domestic Enquiry, would admittedly establish, the allegations against the said employee were really baseless. There is no dispute that the charge sheet against the said employee and the allegations on the basis whereof the same was issued, also form a part of Ext. M-1. In fact, Mr. Banerjee claimed that on the basis of the evidence as available, it would appear that the charges were baseless, more particularly when, the said Sri Gupta in his evidence has agreed that the employee, who used to meet him almost once a week and discussed the issues in dispute earlier, did not behave in any objectionable manner and furthermore when, Sri Lala Maharaj deposed, not to have heard the employee uttering any objectionable word to the said Sri Gupta. In fact, his evidence was that the employee was polite enough, even to offer him his chair. Mr. Banerjee, on the totality of the evidence before the enquiry proceedings, submitted that there was really no case for insubordination made or established against the said employee. It was his submission that no reliance could or should be placed on the statement of Sri Indu Bhusan Dutt and Sri Subodh Kumar Chakraborty, Sri Bimalendu Purkait and Sri Shyamapada Chatterjee, as they were all staff of the section under the said Sri Gupta and in fact, they were made on the same date i.e. on June 27, 1981, i.e. even after 21 days of the alleged incident and furthermore, the evidence of Sri Lala Maharaj, as indicated earlier, was contrary to the allegations. The fact that the employees as indicated were of the department, in my view would not be of much help or assistance, but the fact that their statements were made after 21 days, will have to be considered and so also the effect of the evidence of Sri Lala Maharaj and if such evidence, made the charges baseless.

18. Mr. Banerjee, further, on a reference to the 1964 Rules, indicated that the provisions therein were not duly complied with and the said employee was not given due and necessary opportunities and as such, there was violation of principles of natural justice. It was his further submission that on a reference to the enquiry proceedings as disclosed in Ext. M-1, the above fact would be apparent and that apart, the Enquiry Officer was biased against the said employee, as he did not call the witnesses as asked for by him by his letter, Annexure 'B' to the Written Statement. Then, Mr. Banerjee also contended that the Appeal by the employee was not dealt with duly and properly by the appropriate authorities.

19. Mr. Mukherjee stated there was neither any application received from the said employee for production of any document nor Annexure 'B' to the Written Statement, as indicated new, was filed and that too in time. In fact, the said Annexure 'B' was not at all handed over as alleged, either to the Enquiry Officer or to the filing Section of the C.P.T. He, then relied on the provisions of the 1964 Rules, which according to him applies in this case and he

relied mainly to the provisions relating to the procedure for holding Disciplinary enquiry, the disposal of Appeals and by which authority and submitted that in this case, the Deputy Chairman was thus the Appellate Authority and he duly considered and disposed of the Appeal. It was in fact indicated by him that proper procedure as indicated, have been duly followed and in the facts of the case, it cannot be contained that there was any violation of the principles of natural justice. The relevant Rules, on which Mr. Mukherjee placed reliance were Rules 9, 10 and 11.

20. Rules 9 of 1964 Rules as referred to by Mr. Mukherjee, indicated the nature of penalties and Rule 10 shows, the disciplinary Authorities. It would appear from Rule 10(i) (a) that without prejudice to the provisions of Sub Rule (i), which lays down that the Commissioners in a meeting may impose any of the penalties specified in Rule 9, on any employee and (a) The Chairman or the Deputy Chairman, may impose any of the punishment specified in Rule 9, other than an employee holding a Class-I post; stated that thus the case of the said employee, here in the matter of imposition of the concerned penalty, was duly by the Chairman or the Deputy Chairman. Here in this case, the proceedings were disposed of in the manner as indicated by the Deputy Chairman and as such, it cannot be held and observed that he had no such authority. Rule 11 as mentioned by Mr. Mukherjee deals with the procedure for imposition of major penalty and Rule 12 indicates the procedure for imposing minor penalties. The major penalties would come under Rules 9(i), (ii) and (iii) and other penalties as indicated in the other provisions of that Rule, would relate to major penalties. Thus, in this case, the penalty as imposed, can be observed was a minor one. In any event, on consideration of the terms of the Rules as indicated, in the light of the evidence as available and so also the procedure that has been followed, it cannot be said that there was violation of any principles of natural justice.

21. Mr. Mukherjee further indicated that the charge sheet in the instant case was issued on August 19, 1981, but immediately thereafter the statement in reply was not held by the said employee, but, he filed the same on August 23, 1982, so on a reference to the observations in the case of Raiendra Jain Vs. Canara Bank, 1989 (58) F.L.R. 670, it was claimed by Mr. Mukherjee that no bias or prejudiced mind of the Enquiry Officer could be found out or established and more particularly when, the Enquiry Officer before this Tribunal has stated that he conducted the enquiry duly, which was not challenged in cross-examination and furthermore when, no exception was taken appropriately, to the appointment of the Enquiry Officer and the conduct of proceedings by him. He further pointed out that even on the basis of the observations in the above case, appointment of the representing officer was not mandatory and the Enquiry Officer himself could ask questions on the charges as framed and so it cannot be said that the said Enquiry Officer acted both as a judge and prosecutor, as alleged.

22. It was also submitted by Mr. Mukherjee, on reference to the statement of Sri S. K. Chakraborty,

Sri Lala Maharaj and Sri Indu Bhusan Dutt that charges as levelled, on the basis of or allegations as made, were duly proved. He further indicated that the list of documents as mentioned by the said employee was not produced at the enquiry and in fact Annexure 'B' to the Written Statement of the said employee, was not received at the time of enquiry. He, of course, indicated that the 1964 Rule was amended in 1967, but as indicated earlier, Mr. Mukherjee stated that in this case, the 1964 Rule will apply and not the 1967 Rule. I cannot agree with Mr. Mukherjee's submissions that the observation in the case reported in 1976 (21) R.L.R. 123, which deals with Criminal case and lays down the standard of proof or such procedure of proof as required will have application in this case.

23. Mr. Mukherjee then contended that everything apart, the punishment as imposed, can be supported by and from the circumstantial evidence, as was available before the Enquiry proceeding and in support of that submission, he referred to the case of Jiwan Mul Kochar Vs. Union of India and Others, 1983 Lab. I.C. 1293, where the Supreme Court has observed, when the High Court has made a determination on considering documents and has agreed with the findings recorded by the Enquiry Officer, basing on circumstantial evidence, the same cannot be interfered with. The above view has really and practically re-established the views as expressed earlier in the case of J.D. Jain Vs. Management of the State Bank of India & Others, 1982 Lab. I.C. 356. That was a case, where a Bank employee was discharged and the domestic enquiry or the Rules of evidence as wage required to be followed therein, have considered. Thus, Mr. Mukherjee stated that since in the instant case, it would be evident from the records, if any or otherwise, but at least on the basis of the circumstantial evidence as available, the findings as arrived at, could be approved and so no inference should be made.

24. Mr. Mukherjee further indicated that on a reference to the case of K.L. Tripathy Vs. State Bank of India, 1983 Lab. I.C. 1680 that the doubt, the basic concept of fair play should have play and action in a case of the present nature. But, such fair play or natural justice would depend on the facts and circumstances of each particular case and neither cross examination nor opportunity to lead evidence, is integral part in a quasi judicial adjudication. Mr. Mukherjee was of the view that since the Enquiry Officer in this case, was discharging, not judicial, but quasi judicial powers, so on the principles as indicated earlier, no interference is also necessary or required. In the case of Tata Oil Mills Co. Ltd. Vs. Its workmen & Ors, 1963(2) LLJ 78, the Supreme Court has observed, as to what should be the basic principles or the basis of a proper enquiry and on that basis also, Mr. Mukherjee submitted that the enquiry in the instant case, cannot be held to be devoid of the principle of natural justice or the same should be declared as void, for want of opportunities, when, admittedly, the employee was given due and ample opportunities but he failed, neglected and refused to accept them on his own volition.

25. The main basis of the charge in the instant case, is that, the employee was indisciplined and had conducted himself before the said Sri Gupta in a manner, which was not conducive of office discipline and he was really obstinate, as he not only should at the top of his voice and used unforeignic language against the said Sri Gupta, but his behaviour was also extremely deplorable. From a discussion of the facts as indicated earlier, the very basis of these allegations were no doubt apparent, but in my view, such allegations became baseless and groundless, in view of the specific evidence of Sri Lala Maharaj, which I have recorded earlier.

26. Thus and since the allegations become baseless and groundless, I feel that even in spite of the fact that the enquiry was duly held, the said employee is entitled to the benefits, as a result whereof, this reference should be answered in the affirmative and I order accordingly. I feel that because of the specific evidence of Sri Lala Maharaj, the specific charges as alleged had no legs to stand upon or to get any support really, the very basis of the allegations framing the charges go, and to nothing remains to the charges on these accounts.

This is my Award,

Dated, Calcutta,
The 11th August, 1992.

MANESH NATH ROY, Presiding Officer

नई दिल्ली, 30 सितम्बर, 1992

का.आ. 2748—केंद्रीय सरकार कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 16(i) के अनुसरण में श्रीमती कुसुम प्रसाद के स्थान पर श्री एल.बी. पेरियार, भारतीय प्रशासनिक सेवा (पं. दंगल : 63) के अधिकारी को उनके द्वारा कार्यभार ग्रहण किये जाने की तारीख से तथा आगामी आदेश जारी किये जाने तक महानिदेशक, कर्मचारी राज्य बीमा निगम के रूप में नियुक्त करती है।

[सं. ए. 12026/7/92—एम.एस.—I]

जे.पी. शुक्ला, अवर सचिव

New Delhi, the 30th September, 1992

S.O. 2748.—In pursuance of section 16(i) of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints Shri L.B. Periyar, an officer of the Indian Administrative Service (WB: 63) as Director General, Employee's State Insurance Corporation vice Smt. Kusum Prasad from the date of his taking over charge and until further orders.

No. A-12026/7/92-SS.

J. P. SHUKLA, Under Secy.